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BARRIERS AGAINST DEMOCRACY IN THE BRITISH ELECTORAL SYSTEM

PLURAL voting, university representation, non-payment of members of Parliament and the official expenses thrown upon candidates for the House of Commons are the four most obvious anomalies in the British electoral system. Each of these anomalies has existed for at least three centuries. Each grew out of the gradual but continuous warping of the electoral system—originally quite democratic—that went on between the fifteenth century and the Reform Act of 1832. Each had its origin in the eager desire of either the Crown or the landed aristocracy to control elections to the House of Commons.

Since 1832 it has been repeatedly conceded that all these four warpings of the original electoral system are anomalies; and all would have been swept away years ago, had it not been that they stood as barriers against a democratic House of Commons and, as such, were vigorously defended by Whigs and Conservatives in the House of Commons as well as in the House of Lords. The Whigs easily dominated Liberal admintrations until after the split in the Liberal party arising out of Gladstone's Home Rule Bill of 1886. Whig dominance of Liberal cabinets was not of the past until the Campbell-Bannerman administration was formed at the end of 1905. Then the Whigs were not sufficiently strong or numerous to secure again their control over the Liberal administration, because between 1886 and 1905 all the more powerful Whigs had gravitated to

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the Conservative party and had become indistinguishable in policy or tradition from the Conservatives.

Not one of these four anomalies was ever assailed in a government bill until after the Liberals were completely free of the Whigs; and until Liberal cabinets free from Whig control appeared it was useless, as the history of the Reform Act of 1884 and the Redistribution Act of 1885 adequately proves, for Liberals and Radicals to look to a Liberal government to assail these barriers against a democratic franchise and a democratic House of Commons. Since 1884, all these anomalies have worked to the advantage of the Conservative party. Hence, while Conservatives have repeatedly conceded that none of these barriers would be set up if a new electoral system were to be created, if they are now to be swept away it is inevitable that the reform must be undertaken by a Liberal government.

My purpose in these pages is to deal with the freehold voter and with university representation; to show how each of these anomalies crept into the electoral system and to indicate the influence of each. University representation will receive especial consideration, for the reason that singularly little attention has been bestowed on this part of the English representative system.

I. *Plural voting based on property qualifications*

No elector, whatever may be his qualification—and there are today seventeen different ways in which a man can qualify as a parliamentary elector—can vote more than once in the same constituency. Non-resident voters, some of whom in rare instances may vote as often as forty times in as many divisions at one general election,[1] represent a development in county as distinct from borough elections. It was in the counties that the non-resident voter, exercising the franchise under the Forty-shilling Freeholder Act of 1430, first established himself in the sixteenth century. Just when returning officers at county elections began to ignore the plain direction of the act of 1430, that "choosers of knights of the shire be resident within the shire," it is impossible to ascertain. This abuse apparently

[1] *Cf.* Hansard, May 18, 1892. For an instance of a man with 18 votes, *cf. ibid.* May 26, 1867; and for an instance of a man with 37 votes, *cf. ibid.* May 14, 1906.

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crept into the electoral system before the end of the fifteenth century; but it does not seem possible to determine to what extent the original requirement of residence in the county broke down in this or in the sixteenth century. What is certain is that letters, legal text-books and hand-books for sheriffs, written in the seventeenth century, show clearly that the residential qualification for county voters was long of the past in the reign of Charles II, and that in this reign non-resident voters were pouring into county constituencies pretty much as they do at elections at the present time.[1]

From the time this corruption became established until the reign of Anne, a freehold of the requisite value was the only condition necessary to a county vote; for not until 1712 was the exercise of the county franchise made contingent upon the assessment of the lands or tenements in respect of which the vote was enjoyed to taxes, church rates and parish dues.[2] When once the non-resident voter was well established, the creation of freeholds to qualify voters soon followed—creations which would have been of little value had the residential qualification of the act of 1430 not fallen into desuetude. From as early as the reign of Charles I this method of creating votes—"faggot votes" as they came to be called—was in service; and the ingenuity of lawyers was so continuously and so successfully exercised, and returning officers were so easy-going in their interpretation of the law of 1430, that when Parliament began the reform of the representative system in 1832 it was stated in the House of Commons that there were eighty-five various qualifications for a vote. Included in this number were, of course, the qualifications in the boroughs of England, and in the boroughs and counties of Ireland, where the electoral system was a replica of that of England with all its corruptions. The potwalloper, the scot-and-lot, the burgage and the freeman franchise and the corporation franchise were all in this list. Included also were the superiority in the counties of Scotland and the corporation franchise in that country; but at least seventy of the eighty-five avenues to the franchise had been

[1] *Cf.* Dalton, Office of Sheriff, edition of 1682, p. 332. [2] 10 Anne, c. 31.

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thrown open by the astonishingly wide and even absurd interpretations of the word freehold in the act of 1430.

During the eighteenth century and until 1832 the freehold vote had a value which cannot be said to attach to it today. Manchester, Leeds, Birmingham and many other large towns in the midlands and the north of England—towns which had developed enormously with the industrial progress of the eighteenth century—were until 1832 without members in the House of Commons; and it was only the freeholders in these places who could vote at parliamentary elections. They voted for knights of the shire; and when the Reform Bill was framed, and it was settled that these places were at last to become parliamentary boroughs, one of the problems of the Grey administration was what should be done with these freeholders. An analogous problem was presented by the freeholders in some then existing parliamentary boroughs, who up to 1832 had voted in these boroughs as potwallopers, scot-and-lot voters or freemen, and who by virtue of their freeholds had also voted for knights of the shire.

It would not be safe to assert that the plural voter was not assailed in the long popular agitation that preceded the Reform Act of 1832; but it can be said that he was not assailed when the bill was before the House of Commons. The act as passed put an end to freehold voting in those towns and cities where it had existed. It also deprived occupying freeholders in towns of their right to vote for knights of the shire; and it provided that non-occupying freeholders in towns were to vote in the counties. There were many protests against this plan when the bill was in committee. The Conservatives objected that it was unfair to the agricultural interests—that it materially weakened the position of the landed interest. Every man, said Praed, ought to vote for that place in which his property was situated. The knights of the shire were those who were supposed to represent the agricultural interest, and their return ought not to be influenced by those who had no direct connection with that interest. On the other hand, the cities and towns ought to return individuals to represent the manufacturing and commercial interests. "Let the town freeholders," he continued,

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"have votes in the towns with which they are connected, and with which they have a common interest. Do not send them into the county to vote, from which they have separate and distinct interests." Praed's speech was made in proposing an amendment including town freeholders in the borough constituencies. Russell, who was in charge of the bill, opposed the amendment. He would not concede that the agricultural interest had cause to complain of the clause as it stood. Praed's plan, Russell objected, would tend to the deterioration and injury of the borough constituencies. Moreover,

> it would also tend to create a division and a feeling of jealousy between the agricultural and the manufacturing interests, the union and combination of which alone should be the object of the legislature. . . . Again, in small boroughs it would introduce the system of splitting land into small freeholds for the purpose of promoting particular interests; but it was not possible that a man who had property in a county would divide it for the purpose of making votes, as the number of votes would be so great as to prevent any number he could create from having any material effect on the election. The very reverse, however, would be the case in towns, and the smaller they were the greater effect it would have.

Peel supported the amendment because it simplified the right of voting and would prevent boroughs from interfering in or influencing county elections. Sugden also took the same line, because the clause as it stood would throw the representation of some counties into the hands of town populations and deluge the agricultural interest with voters from outside the counties. The amendment was defeated. Since 1885 there has been no election at which the Liberals have not bitterly complained of just those conditions that Sugden, who was a Tory, had foreshadowed. The Redistribution Act of 1885 was not free from gerrymanders; but the throwing of town freeholders into counties, which since the extension of the franchise in 1884 has cost the Liberals scores of seats at every general election, was clearly a gerrymander in the interest of the Whigs. All through the eighteenth century and up to 1832 the electoral strength of the Whigs lay mostly in the large boroughs, and in quite a num-

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ber of county constituencies the Whigs owed success at the polls to the votes of freeholders in large urban communities which were not directly represented in the House of Commons. Hence in the Reform Act the Whigs were careful that there should be no changes that would jeopard the strength they derived from the boroughs, and from men in industry, commerce and trade who were freeholders in boroughs and who as such were entitled to a vote at county elections.

From 1832 to 1867, accordingly, it was the Conservatives who complained of the influence of town freeholders in determining county elections. It was the Conservatives and not the Whigs and Liberals who in this period suffered most from the outvoters, of whom the Liberals, the Radicals and the Labor party have complained so bitterly since 1885. Had the Conservative Reform Bill of 1859 got beyond its first reading, it was the intention of the government to remedy the grievance of which Peel and Sugden complained in 1832. Disraeli, in introducing this bill, used the same argument in regard to these outvoters that Praed had used in support of his amendment to the Reform Act. "There is no doubt," he said, "that a man should vote for the place where he resides, or for the locality in which he is really and substantially interested." He recalled the manufacture of freehold votes that had been going on for ten years prior to 1859, and also how these outvoters from the boroughs influenced county elections:

> It was proclaimed with great triumph that when a gentleman stood for a county his neighbors who dwelt in the county might vote for him, but some large town in the district would pour out its legions by railway, and on the nomination of some club in the metropolis would elect the representative for the county.[1]

The Reform Bill of 1859 failed. In 1867, when Disraeli was again in charge of a reform bill, conditions in the House of Commons were against any change not acceptable to the Whigs and Liberals; and the borough freeholders, of whom Disraeli had complained, were left where they had been put by the Whig

[1] Disraeli, Speeches on Reform, 1848–1866, p. 190.

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government in 1832. In the bill of 1884—Gladstone's Reform Bill—it was from the first the intention of the government that there should be no interference with the town freeholder. In introducing the bill, Gladstone announced that it left untouched the ancient-right franchises—freeman, liveryman and burgess tenure, and whatever other miscellaneous franchises there were surviving from the old system. In the debates on this bill, as in 1831 and 1859, the Conservatives objected to town freeholders voting in the counties. This objection was made at first reading,[1] at the earliest opportunity that offered, and it was urged in committee also. The government, however, stood by the 112,000 town freeholders. It gave no encouragement to members on its own side of the House, such as McLaren, Labouchere and Arthur Arnold, who were intent on putting an end to plural voting. Mr. McLaren proposed an amendment which would have put the franchise on a "one-man-one-vote" basis. It was opposed by Gladstone; and when Mr. McLaren persisted in going to a division, only 43 members in a House of 278 went into the lobby with him.[2]

The next attack on the plural voter—non-resident county voter, borough freeholder, liveryman of the city of London and university voter—came in 1892. The Liberals had then been in opposition since 1886. The attack was made in a bill introduced by Mr. Shaw-Lefevre, and supported by Sir William Harcourt, Sir George O. Trevelyan, Mr. Stansfeld, Mr. Henry Broadhurst, Sir Horace Davey and Mr. Asquith, all of the opposition front bench. It was a forlorn hope; but it committed the Liberal party and its leaders to the principle of "one man one vote."

Nothing was done for this principle in the Parliament of 1892–95, in which the Liberals were in a majority; but almost the first bill carried through the House of Commons in the first session of the Parliament of 1906–10 was a government bill abolishing all plural voting, much on the lines of the bill introduced in 1892. The Liberal majority, irrespective of the Nationalists, who numbered 83, was at this time 271. The

[1] Hansard, March 3, 1884.

[2] *Ibid.* May 26, 1884.

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Conservatives, who since 1885 have no longer had any grievance against the town freeholder in elections in county divisions, opposed the bill at every stage. They could, however, muster only 61 against it at first reading; 95 at second reading, and never more than 96 at any of the divisions at committee stage. The third reading was carried by 333 votes to 104. In the House of Lords the position as regards numerical strength of parties was reversed, and the bill was rejected by 143 to 43.[1]

The exact number of plural voters on the register on which the general elections of January and December, 1910, were taken is not ascertainable. The official returns compiled when the revising barristers had finished their work, in the autumn of 1909, set the number of ownership voters at 608,270 and that of university voters at 48,154. It is often stated, however, that there are at least half a million plural voters, and as frequently it is estimated that at least eighty per cent of them are of the Conservative party. What is certain about the election in January, 1910, is that there were then 78 county divisions carried by the Conservatives—69 in England, one in Wales, three in Scotland and five in Ireland—where the ownership vote, which is usually an outvote, exceeded in number the Conservative majority.[2]

Since the break-up of the Liberal party in 1886, the plural voter in all his varieties has been an obvious support to the Conservative party; and it was because the plural voter had come to be the greatest of barriers against a democratic House of Commons that the House of Lords threw out the bill of 1906.

II. *University representation*

The city of Oxford and the borough of Cambridge were represented from the reign of Edward I. In each the right to elect belonged, in the sixteenth century and until the reform of 1832, to the mayor and corporation and the freemen. The men of the universities, the heads of houses and the professors, were not necessarily freemen. In the sixteenth century not every resident could make good his claim to the freedom and

[1] Hansard, December 10, 1906. [2] Asquith, Speech at Oxford, March 18, 1910.

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thus to a right to vote in the freeman boroughs for members of the House of Commons. Only occasionally, therefore, could a man permanently attached to the university vote as a freeman. Moreover, in the sixteenth century members of the university who were of the clergy had no right to vote for a representative in the House of Commons, because at this time, and until after the Restoration, the clergy were represented in Convocation, taxed by Convocation, and had no place in the parliamentary system. How far the heads of houses and the professors at the universities were of the electorates of Oxford and Cambridge in the sixteenth century is not now easy to determine. The presumption is that many of them were not of the electorate. What is certain is that, about the time that boroughs like Newark, which had permitted their representation to lapse, were seeking to come again into the representative system, the universities of Oxford and Cambridge were petitioning the crown for representation. Between 1570 and the end of the reign of Elizabeth there were no fewer than six petitions for enfranchisement from one or the other or both of the universities.[1] One of these petitions, that of the University of Cambridge in 1573, was addressed to Lord Burleigh; it urged that each of the universities should have two members in Parliament,

> which Mr. Speaker[2] and others think requisite; as they [the universities] will not always have such as your Lordship to assist them, not having any burgesses in the House who can so aptly answer objections against the universities as they that remain in them and best know their present state.[3]

Although these petitions from the universities for direct representation began as early as 1570, enfranchisement was not conceded until 1603. Then both universities renewed their claim, and representation was given them by charters granted by James I. The phraseology of these charters is of interest to-

[1] Cooper, Annals of Cambridge, vol. ii, pp. 269, 401, 435, 460, 585; Calendar of State Papers, 1569–79, p. 440.

[2] Christopher Wray, April 2, 1571–May 29, 1571.

[3] Calendar of State Papers, 1569–79, p. 40.

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day, because of the variety of grounds on which the representation of the universities has since been justified. In the charter granted to Cambridge in 1603 we read:

> As in the colleges of our university there are many local statutes, constitutions *etc.*, and as in past times, and especially of late, many statutes and acts of Parliament have been made concerning them, it therefore appears to us worth while and necessary that the said university should have burgesses of its own in Parliament who from time to time may make known to the supreme Court of Parliament the true state of that university; so that no statute nor act may offer any prejudice or injury to them or any of them severally without just and due notice and information being had in that respect.[1]

Lord Cecil was at this time chancellor of the University of Cambridge, and Sir Edward Coke was attorney-general; and it was mainly through the instrumentality of Cecil and Coke that, after more than thirty years of agitation, representation was conceded to the universities. Coke, who was of Trinity College, Cambridge, and who had been speaker of the House of Commons in 1593, communicated to the universities that their plea had been granted; and in his letter to Cambridge he offered some advice as to the men who should be chosen to represent the university in the House of Commons. His counsel was that choice should be made "of some that are not of the Convocation House," because of the likelihood that objection would be taken in the House of Commons to members of Convocation; and he urged further that professors of civil law should be chosen as the first members.[2]

It was provided in the charters that the burgesses were to be "two of the more discreet and efficient men of the university for the time being," and that they were to be "at the charge and costs of the chancellor, masters and scholars." The payment of wages to members from boroughs and counties was nearly at an end by 1603. Few boroughs or counties were called upon by their representatives to pay the statutory wages

[1] Huber, English Universities, vol. iii, p. 421. *Cf.* Cooper, Annals of Cambridge, vol. iii, p. 344.

[2] Mullinger, University of Cambridge, pp. 459, 460.

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and expenses after the reign of Henry VIII. But the theory of the constitution in 1603 was still that wages and expenses were paid; and for a few years the University of Cambridge complied with the condition of the charter which required that its representatives in the House of Commons should have their wages and expenses defrayed by the university.[1] As long as wages survived in the boroughs and the counties, they were levied on the voters like any other municipal or county charge. It would seem that at Oxford and Cambridge they were a charge on the universities, and that representation in Parliament threw no burden on the men of the universities to whom in 1603 the right to vote for members of the House of Commons had been conceded. It is extremely doubtful, however, whether at either Oxford or Cambridge wages and the payment of the traveling expenses to and from London and the *per diem* expenses of the members while in London survived the reign of James I. By 1624 Cambridge University, as regards its representation in the House of Commons, was easily under the control of the court[2]; and with court or territorial control of any borough, as the history of the break-down of the system of local payment of wages shows, such local payment to representatives invariably disappeared. In the Parliament of 1603–04 both universities were represented by men of the qualifications suggested by Coke in his letter to Cambridge—men who were of the universities in the strictest sense of the term, since they were resident in the universities and continuously associated with their life. Henry Mowtlow, LL.D., of King's, public orator of 1589, and Nicholas Steward, LL.D., of Trinity,[3] were the first members for Cambridge; and Oxford, to which Coke had given similar counsel, was represented by Sir Francis Dunne, knight, and Sir Thomas Crompton, knight, both doctors of civil law.[4] Sir Isaac Newton represented Cambridge in the Parliaments of 1689 and 1701–02; but, from the first representation of the universities in the Parliament of 1603–04 until the Reform Act of 1832,

[1] *Ibid*, p. 461.

[2] Calendar of State Papers, 1623–25, p. 143.

[3] Mullinger, *op. cit.* p. 461.

[4] Return of Members of Parliament, part i, p. 445.

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Pitt, who was one of the members from Cambridge from 1784 to 1806, Charles Abbot, who was one of the members from Oxford from 1806 to 1807 and speaker from 1802 to 1817, and Peel, who was member for Oxford from 1817 to 1829, were the only university members who made for themselves a place in the history of the House of Commons.

The universities were court boroughs as long as it was to the interest of the sovereign to control representation in the House of Commons. After government by party and by cabinet became established, Oxford and Cambridge took on the character that marks them both today. They became, almost as a matter of course, strongholds of the Church of England, for until 1871 only members of the Church of England could be of the university electorate; and as a result of this church connection they became also strongholds of the Tory party.

From 1603 until 1832, when statutory recognition was given to the charters of James I and the right of the universities to representation in the House of Commons was continued, there is little of interest in the representative history of the universities, except the political prominence of a few of their representatives and their unvarying and steadfast loyalty to the Tory party. During this period they gave no trouble to the election committees of the House of Commons. There were no controverted elections. The journals of the House are consequently searched in vain for any information as to election usages. From the first the vice-chancellors of the universities acted as returning officers; and the franchise, as nowadays, was based on membership of the Senate at Oxford or of Convocation at Cambridge. To secure the right to vote, a man must take the bachelor of arts degree; then proceed to the master of arts degree, which is obtained merely by a payment, without any further examination. He must then pay an annual or a commutation fee in order to have his name continued on the books of his college, from which the roll of parliamentary electors is compiled. From 1603 to 1867 attendance at the poll was necessary, and so long as this requirement was maintained the number of voters was small. It could not have been otherwise with Crown control and the poor facilities of the seventeenth century

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for travel; and it is inconceivable that the number would increase much until the era of stage coaches and of less expensive travel, beginning in the latter half of the eighteenth century. In 1727 only 377 electors[1] polled at Cambridge; as late as 1780 the number of voters was only 546; and in 1784, when Pitt, who had been a candidate in 1780, was elected, the number was only 588.[2]

Under the old system, each elector carried to the vice-chancellor in open hall the names of the two candidates for whom he voted on a slip of paper. This was the earliest form of secret ballot in use at parliamentary elections. In all other constituencies, save those of Oxford, Cambridge and Dublin (and, after 1867, those of London, Edinburgh and Aberdeen, Glasgow and St. Andrews) there was open voting until 1874; and it was a grievance with the early parliamentary reformers —the men who went into this movement about the time of the American Revolution—that, while in all other constituencies electors were compelled to declare in public for whom they polled, at university elections voting was secret.[3] Peers, who by reason of their university qualifications—B. A. and M. A. and payment of fees—were on the roll, were not permitted to vote, for the same reason that they were debarred from voting at borough and county elections. As long also as all bishops were of the House of Lords, bishops were not permitted to vote at university elections. Electors for the old university constituencies had three distinctions which set them apart from any other electors who have participated in the representative system. To qualify, in the old days, they had to subscribe to the Thirty-Nine Articles, pass the examinations for the B. A. degree, and make a payment to the university or the college to complete their qualification as members of the Senate or Convocation.

Similarly the representatives of the universities had a peculiar place among members of the House of Commons. Their privileges within the House were those of other members: no par-

[1] Cooper, Annals of Cambridge, iv, 194.

[2] Poll Book, 1780–1882.

[3] *Cf.* Cambridge Poll Book, 1780, p. iv.

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ticular seats were ever assigned them nor was any special consideration shown them. But, from the time property qualifications were imposed in 1710 until all property qualifications were abolished in 1858, the members for the universities of Cambridge, Oxford and Dublin were not required to possess landed or personal property as a qualification for a seat in Parliament. They were favored also in another important particular. Their election expenses, when they had any, were small indeed in comparison with those thrown by usage or by law on other members of the House of Commons. Oxford, it would seem, has for three centuries complied with the condition of the charter of 1603, that "the burgesses were to be at the charge and costs of the chancellor, masters and scholars." In the eighteenth century it had long been the usage that the representatives should be put to no expense in connection with their elections[1]; and, as recently as the general election of 1900, the returning officer at Oxford reported to the secretary of state for the Home Department that none of the columns of the return of election expenses sent from the Home Office to him for filling in were applicable to the election of burgesses for the university, and that no expenses were charged by the returning officer. Cambridge, however, has not adhered so closely to the condition in the charter of 1603. At the election in 1900, there was a charge of £14 8*s* by the returning officer. There was also an agent's fee of £21, and there were charges for printing and advertising and for expenses of public meetings. But the total expense to the two successful candidates—the late Sir R. C. Jebb and Sir John E. Gorst, who was then of the Conservative party—was only £53.[2]

The older universities were obliged by the terms of their charters to return members of their own bodies; and today the universities of England, Scotland and Ireland, which return in all nine members, are the only constituencies in which outsiders may not be elected.

[1] *Cf.* Oxford during the Last Century (1857), p. 18.

[2] London University, it may be added, follows the Oxford usage. Its member in the House of Commons is put to no expense for his election. Return of Parliamentary Election Expenses, 1901, p. 46.

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From 1603 to the union of Ireland with Great Britain in 1801, Oxford and Cambridge were the only universities with representatives in the House of Commons at Westminster. University representation did not exist in the Parliament of Scotland; so that at the union of England and Scotland in 1707 there was no addition to the number of university members in the House of Commons. The first addition came in 1801, as a result of the union with Ireland. Then one member was conceded to Trinity College, Dublin. From 1613 to the end of the Irish Parliament, Trinity College had been continuously represented by two members. The franchise and the mode of election were much the same as at Oxford and Cambridge; for the charter from James I enfranchising Trinity was nearly identical in terms with the charters enfranchising the English universities. There was a provision directing that the representatives of Trinity should be of the college; but when Trinity lapsed into a crown or government borough the characteristic ingenuity of Irishmen in working representative institutions easily surmounted that difficulty. If a seat in the House of Commons was needed for some Englishman not of the college, who had come over in the train of the lord lieutenant, he was made a graduate, receiving not an honorary but a regular degree,[1] much as non-residents were at one time made freemen in the English and Irish boroughs, to conform with the old laws which ordained that persons sent to Parliament should be residents of the constituencies which they represented.

Unlike Oxford and Cambridge elections, those held at Trinity occasionally gave trouble to the House of Commons. There were at least two election petitions during the first half of the reign of George III, one in 1777 and the other in 1791. Both were due to the determination of Hely Hutchinson, who was provost and, as such, acted as returning officer, to control the representation of the college, in much the same way as Blessington and Bannow were controlled by the patrons—otherwise the bosses—of those Irish parliamentary boroughs.[2] It could

[1] *Cf.* Peckwell, Controverted Election Cases, vol. i, p. 19.

[2] Journals of the Irish House of Commons, vol. ix, p. 321, and vol. xiv, p. 33.

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never have been a difficult undertaking to control the representation of Trinity; for in the last half of the eighteenth century the franchise became more restricted than at Oxford and Cambridge, being confined to the provost, fellows and seventy junior scholars (students who were holders of scholarships that ran for five years); and at no time in the eighteenth century did the number of electors exceed one hundred. At the time of the union, many Irish boroughs had to succumb; others were deprived of one of their members. Trinity's right to elect was made secure from the outset, in the negotiations and the legislation that preceded the union; but it was deprived of one member. In the House of Commons at Westminster there was only one member for Trinity until the Reform Act for Ireland that was passed in 1832.

At this time—that is when Parliament, in 1831 and 1832, was for the first time in its existence giving any general consideration to the system of representation on which members of the House of Commons were elected—it was taken for granted that Oxford and Cambridge should continue to send members to Parliament. The rights of these universities to parliamentary representation do not seem to have been challenged. The Grey administration was indeed so enamoured of university representation that, in the Reform Act for Ireland, it restored to Trinity its right to elect two members. In supporting this addition to university representation, Lord Althorp, who was chancellor of the exchequer and one of the most thoroughgoing reformers in the Grey administration, advanced a plea in support of university representation which is as significant today as it was then, but which is quite different from the plea on which Oxford and Cambridge were first admitted to representation in 1603. In the reign of James I the plea was that it was expedient that the universities should be directly represented because their interests might be jeoparded by adverse legislation. This plea was entirely overlooked or ignored by Althorp in 1831, and a new plea was advanced. O'Connell had objected to the proposal, because it would continue a principle of exclusion that was unfair to Roman Catholics; and Sir Charles Wetherell, who was opposed to reform in any shape, had char-

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acterized the proposal as a job. "It was deemed expedient," said Althorp, explaining the policy of the government as regards university representation and also replying to O'Connell,

> that Oxford and Cambridge should possess their present elective system as a means of protecting the interests of the Established Church; and in conformity with that principle it was thought but fair that the interests of the Established Church in Ireland should be equally protected in that House. On that ground too, he must tell the honorable and learned member for Waterford, that the franchise ought to be confined to Protestant scholars.[1]

Almost a month before the government policy with regard to Dublin University and its representation was announced in the House of Commons, the Earl of Haddington in the House of Lords put in a plea for the universities of Edinburgh and Glasgow. He moved for a return of the number of graduates who had taken degrees at these universities in divinity and medicine between 1800 and 1830; and the Earl of Roseberry in supporting the motion expressed a hope that parliamentary representation would be conceded to these two universities.[2] Later, in the discussion in the House of Commons on the Reform Bill for Scotland, two Scottish members, Sir George Murray and Sir George Warrender, urged the claims of the universities of Scotland. The constituency, Warrender affirmed, would consist chiefly of Scottish ministers of the church, many of whom had taken degrees at the universities. "And a more honest, upright and independent body of electors," he added, "could not be had in the United Kingdom." Warburton, who was prominent among the Radicals of the Reform Bill era, threatened that if there was a proposal to enfranchise the universities of Scotland he would oppose it, and he thereby gained the distinction of being one of the first Radical members to object to the principle of university representation. From the treasury bench there was an intimation by the lord advocate, who was in charge of the bill, that the subject of the enfranchisement of the universities in Scotland had already been before the govern-

[1] Hansard, March 24, 1831.

[2] *Ibid.* March 8, 1831.

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ment.[1] But the Grey administration went no farther than to consider the subject; and there were no further additions to the members from the universities until, by the Reform Acts of 1867, the University of London and the Universities of Glasgow and Aberdeen and of Edinburgh and of St. Andrews were brought within the electoral system.

Between 1850 and 1867 there were five or six reform bills, all of which, from one cause or another, were abandoned; but, beginning with Lord John Russell's bill of 1854, the governments responsible for these bills, whether Conservative or Whig or Liberal, were committed to the enfranchisement of London University and of the universities of Scotland that had unsuccessfully sought parliamentary representation in 1832. Between 1832 and 1867, however, the movement of which Warburton was the spokesman in 1832 had increased in strength, and there was much opposition to the principle of university representation when the Reform Bills of 1867 for England and Scotland were before the House. This opposition was directed chiefly against the proposal of the Disraeli government to enfranchise the University of Durham, established in 1832, and to join Durham with the University of London in returning one member. The first proposal was that of the two newer English universities London alone should be enfranchised. But at committee stage an amendment was proposed by the government to include Durham. The friends of London University promptly objected to this university being hyphened with the smaller institution. It was objected that the distance between the seats of the two universities was too great; that Durham had only about two hundred graduates while London had more than two thousand; that London was growing every day while Durham was stationary; and also that there had been a promise in three successive reform bills of enfranchisement for London, while the proposal to include Durham had been sprung upon the House only after the bill had gone into committee. "The two universities," objected Grant Duff, "have no affinity. You might as well talk of joining Tattersall's and the Inns of Court."

[1] Hansard, September 23, 1831.

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"Join Durham," he added, "with one of the older universities." A Conservative government was in power at this time; but it was a government that did not command a majority in the House of Commons. It was defeated on a division on the first of two amendments necessary to bringing in Durham and joining it with London; and thereafter Disraeli, as leader of the House, was compelled to accept a motion to report progress which had been made by the friends of the University of London.[1]

The following day the contest in committee was resumed. Lowe then objected that Durham was local and provincial, while London was "metropolitan and cosmopolitan, and extending its influence more and more every day all over the world." "The one university," he added, "is ecclesiastical. The other is preëminently secular." Bright began his speech in opposition to the proposal to join Durham with London with the statement that he was not in favor of university representation. He continued:

> The representation of the ancient universities of Oxford and Cambridge was created in times about the worst in our history. The members they have sent to this House, learned as some of them have been, and amiable as many of them have been, have not been representatives such as it would be wise—I speak of their political views—to follow. I therefore say I am not in favor of the representation of universities. If I had the making of a reform bill for introduction to this House, I should have done violence to my own views with regard to this subject, and should have condescended to the weakness, or it may be to the greater wisdom of the House, if I had proposed to give representation to the University of London. At the same time, seeing that other universities have representatives, I think that is a strong argument in favour of London. Therefore I shall be willing to vote for conferring a representative on the University of London.[2]

Bernal Osborne, another Radical member, went further in his objection to university representation than Bright. "We are already," he said, "overstocked with university members. I do not see that there is any good in giving members to universi-

[1] *Ibid*, June 17, 1867. [2] *Ibid*.

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ties"; and, putting his objection in concrete form, Osborne moved an amendment to the clause which would have had the effect of giving to Liverpool the member that it was proposed to give to the universities of London and Durham. Liverpool at this time had a population of half a million and had only two members in the House of Commons.

These objections to the principle of university representation from Bright and Osborne brought Disraeli into the debate in its defence. He advanced a new argument—the third since the reign of James I—for university representation; and from 1868 down to the last serious assault in the House of Commons on this privilege of the universities, by the Plural Voters Bill of 1906, university representation has been based by its defenders on the ground selected by Disraeli. He said:

> I am of opinion that it would be well that the university should be represented, because it would give us a constituency of learned and enlightened men. I am in favor of an intellectual element being introduced into this House, purposely and professedly as such. We should not in all cases be merely the representatives of material interests.[1]

As the debate proceeded it came out that a religious test had to be taken before a graduate of Durham could be of Convocation. From Mowbray, who represented the city of Durham, and who throughout the discussion had acted as the spokesman of Durham University, there was a promise that the religious test should be abolished. But this discovery was apparently fatal to the plan of the government to include Durham with London in one university constituency; for on a division on the amendment necessary to make this change in the bill, the government was defeated by eight votes.[2] This was one of the many instances in which the Liberal and Radical opposition ran away with the Reform Bill of 1867, remodelling it in a manner never intended by the Disraeli government when it committed itself to an extension of the parliamentary franchise and set out to "dish the Whigs."

[1] Hansard, June 18, 1867. [2] *Ibid.*

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With the principle of university representation recognized and extended by the Reform Act of 1867 for England, the extension of the principle to Scotland was taken as a matter of course. The first reading of the Reform Bill for Scotland took place on May 13. Seven members were added to the representation of Scotland. One member was assigned to the universities of Edinburgh and St. Andrews and one to those of Glasgow and Aberdeen. In introducing this bill Disraeli said:

> These are very learned, ancient and dignified institutions. But it was not until 1858 that they had popular constitutions conferred upon them. Until a measure of that kind was carried, it was quite impossible that the question of the representation of the universities could be considered, because they had no means of establishing a constituency.

The grouping of the universities for parliamentary representation was explained by the lord advocate. "It was thought," he told the House, when the bill was in committee and when it had been settled that there should be two members and not one as originally proposed, "that some jealousy might probably exist between Glasgow and Edinburgh; and it was therefore much better that the interests of each of these universities should be attended to by a separate member." At committee stage the only objection to university representation came from Baxter, a Liberal member from Scotland. There had been nothing to admire, Baxter insisted, in the practical operation of university representation in England and Ireland, and he declared that the extension of the principle was wholly indefensible.[1]

The Reform Acts of 1867 thus increased the number of the university members from six, at which it had stood from 1832, to nine, at which it has since remained. In 1884, when the bill for the extension of the franchise was before Parliament, there was no proposal to bring Durham or any of the newer universities into the representative system. On the contrary, the principle of university representation was seriously challenged. Since then it has twice been assailed in the House of Commons: and in 1906, if the House of Lords had not intervened and re-

[1] *Ibid.* May 23, 1867.

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jected the Plural Voters Bill, an end would by this time have been made to university representation. This bill did not indeed propose to deprive the eight privileged universities of their parliamentary franchises, but it would so enormously have reduced their electorates as to have made university representation an absurdity, and disfranchisement must necessarily have followed.

From the early years of the eighteenth century—from the time when political parties came into existence and became grouped, seated and organized in the House of Commons—until the Reform Act of 1867, a Whig or Liberal member was never returned for Oxford or Cambridge. From the union with Ireland in 1801 to 1867 a Whig or Liberal member was never returned from Dublin University; and from 1867 to the last general election in December, 1910, the representative history of these older universities, in its political aspects, has been the same as from 1801 to 1867. All the representatives from these three universities in the eleven Parliaments elected since the second extension of the franchise in 1867 have been of the Conservative party. The universities enfranchised in 1867, however, have not been so persistently Conservative. Lowe, who was elected as a Liberal, represented London University from 1868 to 1880; Lubbock, now Lord Avebury, was elected as a Liberal in 1880 and was of the Liberal party until 1886, when he was again returned for London University as a Liberal Unionist. Playfair, who was a Liberal, represented the Universities of Edinburgh and St. Andrews from 1868 to 1885, when he became a peer; and Moncrieff, who was the first member for Glasgow and Aberdeen, 1868–69, was also elected as a Liberal. During the last forty-two years, in which period there have been eleven general elections, four Liberal representatives have been chosen by the universities enfranchised in 1867; but not a single Liberal has been returned from any of these constituencies since the election in 1886 that followed the rejection of Gladstone's first Home Rule Bill by the House of Commons.

The fact that the universities enfranchised in 1867 have been since 1886 as persistently Conservative as the older universities

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of Oxford, Cambridge and Dublin undoubtedly accounts to some degree for the present democratic hostility to university representation. But the Conservative attitude of all the university electorates only partially accounts for the likelihood—almost certainty, indeed— that when the veto of the House of Lords on legislation has been modified or abolished, the university electors, like the plural voters with other qualifications, will be completely eliminated from the electoral system by the first bill for simplifying franchise laws and redistributing seats which a Liberal government can carry through Parliament.

III. *The attitude of the Liberal party towards university representation since 1884*

The first organized attack in the House of Commons on university representation was made when the Redistribution of Seats Bill was under consideration; and at that time the House first divided on the principle of university representation. It is significant that this attack, which was led by Mr. James Bryce, was made while the universities of London and of Edinburgh and St. Andrews were still represented by Liberals, and before it could be foreseen that all five universities enfranchised in 1867 would put themselves in line with Oxford, Cambridge and Dublin and become permanent strongholds of the Conservative party.

The main attack was necessarily made on the Redistribution of Seats Bill; but there was some skirmishing on the bill of 1884, the main purpose of which was to give votes to the working classes in the counties who had been left unenfranchised by the Disraeli-Gladstone Act of 1867. Gladstone had not a free hand in 1884. No government, Conservative, Whig or Liberal, ever has had a free hand in framing a measure for the reform of the electoral system. Grey had to confront the Lords in 1831–32. Disraeli had again to confront them in 1867; and Gladstone had to confront them in 1884. Gladstone, like his predecessors, had to frame a bill that would give rise to the least possible opposition in the House of Lords; and in framing the Redistribution Bill which was enacted in 1885, he and his government were obviously hampered by the agreement with the

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leaders of the Conservative party in the House of Lords as well as in the House of Commons, entered into in order to end the deadlock which had arisen from the action of the Lords in rejecting the Franchise Bill in July, 1884. These conditions influenced the Gladstone government quite materially in opposing the movement for eliminating the plural voter and putting an end to university representation. The preliminary skirmishing against university representation on the bill of 1884 was remarkable only for one episode—for a speech in which Sir Henry James, the attorney-general, declared that if the question of the universities were raised he did not see how he could defend the existing system. He did not see, he added, how he could defend it any more than he could defend the right of freeholders to plural votes.[1]

The amendment proposed by Mr. Bryce, March 6, 1885, when the Redistribution Bill was in committee, would have eliminated the universities from the representative system. Mr. Bryce did not rest his case on the ground that university representation was an anomaly, for he saw no harm in anomalies if they were practical and useful, but on the ground that the existing system was bad for the universities. It was bad because representation intruded party politics, not only into the universities themselves, but into the academical governing bodies, the Senate at Oxford and Convocation at Cambridge. On this point he said:

> This is a serious evil, because it tends to make parties in a university form themselves upon political lines. Thus it prevents persons from forming as fair and as impartial a judgment of educational questions as they otherwise would do, by making them associate themselves with political sections which have nothing to do with education. In some cases the evil was carried so far as to run candidates for academical appointments on purely political grounds, and appointments were made with little reference to the merits of the candidates themselves, but solely from political considerations or to reward political services.

As to the men who were sent to the House of Commons from the university constituencies, Mr. Bryce told the committee that

[1] Hansard, May 26, 1884.

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"they were really not members for the university at all. They knew nothing about the university. They were the members for a large number of persons scattered over the country, and not for the true universities as teaching bodies." Describing the electorates of Oxford and Cambridge—5382 electors for Oxford and 6458 for Cambridge—Mr. Bryce continued:

> The persons who actually voted as the technical and legal constituents of the university were gentlemen who at one time of their lives, between the ages of seventeen or eighteen and twenty-one, had spent three years at Oxford or Cambridge, who might have devoted little or no attention to their studies while there, and who after leaving the university had not in most cases kept up their connection with it, seldom or never visiting it, and knowing little or nothing of what was going on there. Few of them took any interest in it, and if they had any tie, it was a tie with their colleges and not with the university. Nor was it even the fact that all those who had taken their M. A. degree had a vote; for the right of voting was confined to those who paid a certain sum per annum to keep their names on the college and university books. Thus the university voters were to a great extent men belonging to the wealthier class, and instead of forming a large body of highly educated men they mainly consisted of persons not substantially superior to the rest of the upper and middle classes and by no means of those who had profited most by the university or its studies.

It would be no hardship, Mr. Bryce further contended, to deprive these university electors of the franchise. The majority were country clergymen; and every non-resident university voter was practically certain to have another vote. As for the university voters who were resident, Mr. Bryce's suggestion was that these electors should vote in the boroughs in which the universities stood. Finally, he urged that there were no constituencies less independent than the universities, because they were constituencies which had no local life and were at the mercy of the agents and political wire-pullers. "Talk of caucus dictation," he said, "there are no constituencies in the United Kingdom more absolutely at the mercy of an irresponsible and unrepresentative caucus than the University of Oxford—none upon which the Carlton Club could more easily impose a member."

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Up to this point Mr. Bryce had confined himself to Oxford and Cambridge. Turning to the Scottish universities—Glasgow and Aberdeen with 6438 electors, Edinburgh and St. Andrews with 6583 electors—he reminded the committee that their voters had not even been resident and had no tie to bind them together.

> The electors were mostly medical men, scattered all over the country, who had not even the college feeling that existed among Oxford and Cambridge graduates, men who never took the slightest interest in their universities except when they received a circular asking them to vote for a particular candidate. They might as well give a man a vote for Brighton because he once happened to spend a year of his life there, as to give a vote to an English or Irish graduate of a Scottish university who had lived in Glasgow or Edinburgh during the period that was occupied in taking his degree.

As for Trinity, Mr. Bryce described that as a constituency which served mainly to provide *ex officio* seats for law officers of the Crown under Conservative governments.

Twelve additional seats were needed for Scotland. Nine of these, Mr. Bryce urged, could be got from the universities. University representation was an experiment which had altogether failed to bring any beneficial result either to the country or to the universities. "The time had now arrived," he added, "when it became desirable to dismiss this device of the Stuart kings to the limbo to which so many other of their devices had been relegated."[1]

Two long sittings of the House in committee, on March 6 and 10, were occupied with the discussion of Mr. Bryce's amendment. There was no defence of university representation from the treasury bench. Sir Charles Dilke, then president of the Local Government Board, was the minister in charge of the Redistribution Bill in the House of Commons. He put forward the case for the government—the case for resisting the amendment—immediately after Mr. Bryce had finished his long speech. At the outset he conceded that Mr. Bryce had made out an unanswerable case against university representation in

[1] Hansard, March 6, 1885.

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the abstract. He indicated his expectation that the universities would be disfranchised.

> I believe that it is perfectly unlikely that university representation will survive the next Conservative reform bill. Mr. Bryce has given many reasons for objecting to the university vote. But there is one reason which weighs with me more than any other. It applies equally to the freehold voter. I believe it is unwise and undesirable to give double representation in the House because of any special qualification; and it is perfectly clear that university representation is not needed in these days for the purpose of returning men of intelligence.

Sir Charles Dilke then reminded the committee that it was dealing with a bill "which was the result of an arrangement or of general consent between the different parties in the House of Commons" and announced that it was impossible for the government to accept Mr. Bryce's amendment.[1] Later in the debate, when a member recalled the fact that the Bryce amendment would abolish university representation, there was a cheer from Sir William Harcourt. Otherwise members on the treasury bench contented themselves with Dilke's statement; for when Gladstone intervened he was cautiously non-committal. "On the general question," said the premier, "I do not venture to give an opinion, as it is one which, when it is brought forward, will require very mature consideration. I do not venture to convey an intimation as to the course I should myself take."[2]

The most outspoken utterance against university representation was from the Nationalist members, who occupied most of the sitting of the committee on March 10. "They had now," said Mr. Tim Healey, "got these universities in their power." His advice was to "cut their throats." "Kill them now; for if they had another chance it would be giving them a fresh lease of life." The country was entering upon a democratic course. It might be right or it might be wrong, "but," continued Mr. Healey, "let us go on fairly and squarely. If you are going to trust the people, trust them all through and do not fall back upon such a system as this of university representation."

[1] *Ibid.* March 6, 1885. [2] *Ibid.*

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Plunket, Playfair, Lubbock and Gibson—all university members—defended university representation. The ablest defence was from Gibson, of the University of Dublin, who said:

> In a Parliament of 670 members, surely it was not too much to ask that its dead level of representation should be broken by the interposition of university members, men whose business it was—in addition to representing what they conceived to be the wants of the whole country—to exercise the special function of considering the claims of education and the requirements of the law, the church and medicine.

The only Conservative leader who intervened was Northcote. "Do you not see," he said, arguing in defence of the existing system, "the importance of preserving some kind of counter balance, however slight, against the power of mere numbers?"

On March 10, at the end of a four hours' discussion, the committee divided on Mr. Bryce's amendment. It was rejected by 260 votes to 79; and no further attack was made on university representation in the House of Commons until 1892, when for the first time there was a proposal to class university voters with plural voters and to dislodge both from the place which for three centuries they have held in the representative system.

In the last session of the Parliament of 1886–92 the Liberals were in opposition. The bill to establish the electoral system on the basis of one man one vote was a private members' measure. It was introduced by Mr. Shaw-Lefevre and backed by Sir William Harcourt, Sir George O. Trevelyan, Sir Horace Davey, and Messrs. Stansfeld, Henry Broadhurst and Asquith. It was the most radical bill which up to this time had been submitted to the House of Commons by men who had been members of administrations. Every man whose name was on the back of the bill had held office in Liberal governments, and Harcourt, Trevelyan, Lefevre and Stansfeld had been members of Liberal cabinets. But with a Conservative government in power their undertaking was hopeless. The bill was rejected at second reading by a large majority; and it is noteworthy today only as a part of the history of the movement against university representation and because of the attitude which the Conservative government of 1886–92 took in regard to the

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question. "The representation of the universities," said Mr. Goschen, chancellor of the exchequer, in opposing the bill on behalf of the government, "could not survive if this bill were passed, and that means the disfranchisement of a large number of persons. I am against the bill on the ground that it indirectly disfranchises those institutions whose representation I think is valuable to the country." Harcourt replied to the chancellor of the exchequer. "I shall not," he said, "be prevented by fear of manhood suffrage, or fear of what may happen to the universities, from giving a cordial vote in favor of this bill."[1]

Only once has university representation been assailed in a government measure. The Plural Voters Bill of 1906 followed in the main the lines of the Shaw-Lefevre Bill of 1892. It was introduced by Mr. Lewis Harcourt, commissioner of works in the Campbell-Bannerman government, and had it passed the House of Lords it would have prevented any voter—university or otherwise—from exercising the franchise in more than one parliamentary constituency. In asking leave of the House to introduce the bill, Mr. Harcourt said:

> We have always been told that the university vote secured the representation of brains, and that it was greatly valued by the intellectuals who were privileged to exercise it. I accept that argument. But the government are leaving in existence the right to vote for the university of every graduate who wishes to make the choice and who has paid the fee which is the principal qualification. Are we to be told that the universities are going to be bled white of voters by the disloyalty of their own alumni? Is it to be contended that the country clergy, who form the bulk of the electorate, are going to prefer the polling booth next to the rectory, where they are only temporary lodgers, to the glory and sentiment associated with their alma mater?

Mr. Balfour, leader of the opposition, objected that the bill would destroy the university seats.

> They would be mere wrecks of their historic selves if this bill passes. Those who vote for this bill are consciously or unconsciously, without

[1] Hansard, May 18, 1892.

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discussion, without argument, without full public consideration, going to destroy one of the most dignified and most interesting elements in our composite electoral system.[1]

At committee stage there was an amendment from the opposition intended to preserve and safeguard the university vote. It was moved by Mr. Cave, who pleaded for the exemption of the university franchise from the provisions of the bill because "the university vote was the sole trace in our constitution of an educational qualification."[2] Mr. Butcher, who represented the University of Cambridge, conceded that if the country were establishing its electoral system *de novo* there would be no university representation. Sir William Anson, who represented Oxford, agreed that university representation was an anomaly, but pleaded that as the constitution was full of anomalies there was no reason why this one should not continue. "If university representation were abolished, where," he asked, "would be the representatives in the House whose duty it would be to attend to higher educational interests and watch over their progress?" Sir Henry Craik, member for Glasgow and Aberdeen Universities, advanced substantially the same plea. "In Scotland," he said, "the university elector regarded himself as voting specially to represent the interests of education and the higher professions. Many electors voted as people charged with the special duty of guarding the interests of science, literature and education." For London University its representative, Sir Philip Magnus, claimed that it was a most democratic institution. "The right to vote," he said, "could be exercised by every graduate who paid five shillings a year or a commutation fee of one pound. It mattered not whether he was B. A. or M. A., the qualification rested upon education alone." Mr. Balfour's grievance was that the bill would alter the historic constitution of the country by a side wind. "University representation," he declared, "is a part of our system. It works well and smoothly. It produces no hardships. Let it remain." Only 92 members took Mr. Balfour's view, while 347 went into the lobby in favor of the bill.

[1] Hansard, May 14, 1906.

[2] *Ibid.* October 24, 1906.

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In the House of Lords the only debate was at second reading, on an amendment for the rejection of the bill. Lord St. Aldwyn not only defended university representation as it existed but urged that the principle should be extended to the younger universities, Manchester and Leeds, and to the second university in Ireland. He said:

> The principle has worked well. It enables the voices of certain classes to be heard in the House of Commons which would hardly be heard but for university representation. The clergy of the Church of England, the different branches of the Presbyterian Church in Scotland, the members of the medical profession, all have their views represented, as I think they could only be represented by this system, and university representation should not be abolished.

"It is disfranchisement carried out in a most insidious manner. I say this particularly on account of the manner in which the bill disfranchises the university constituencies" was the Marquis of Lansdowne's brief contribution to the debate; and following this lead the Lords rejected the bill by 143 votes to 43.[1] There for the present ends the parliamentary history of the movement begun in 1884 for the elimination of the university voter.

After the fate that befell this bill for the elimination of all plural voters, it was clearly useless, so long as the power of the House of Lords remained unchecked, for a Liberal government to attempt any reforms which would place the electoral system on a uniform democratic basis. The two general elections of 1910, however, make it now certain that the veto of the Lords will be modified; and the later sessions of the Parliament elected in December last must inevitably be devoted to electoral reforms, on lines similar to those to which the Liberal party has been committed since 1892.

EDWARD PORRITT.

HARTFORD, CONNECTICUT.

[1] *Ibid.* December 10, 1906.

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"PEOPLE'S RULE" IN OREGON, 1910[1]

I. *A program*

THE past year has been one of great political activity in Oregon. Observers at a distance may have entertained the notion that, with the securing of the initiative, the referendum and the recall, not to speak of the direct primary and a genuinely popular election of senators, all pressing problems had been solved, and that these devices of the new institutional democracy would now be subjected to years of quiet testing. Little did they understand the spirit of the Oregon leaders. The men who had championed direct legislation and kindred institutions in that state were by no means disposed to rest content. The triumphs they had secured had come singly, in laws neither entirely consistent with each other nor with other parts of the governmental machinery as yet untouched. Accordingly, fifteen months in advance of the general election of 1910, they set about devising a system whereby the conduct of state and county government might "be made as efficient and economical as the management by citizens of their private business." Such was the ambitious aspiration which prefaced a series of proposals, printed in an edition of 7500 copies and distributed in midsummer, 1909, accompanied by a letter of explanation, signed by eighteen men whose names are familiar as sponsors of the direct-legislation measures of the past decade. These documents were sent to thousands of representative voters of Oregon and also to interested correspondents in other and distant states, for the purpose of obtaining opinions regarding the wisdom of the scheme. The proposals thus circulated were: to submit, by initiative petition, at the election in November, 1910, a bill for the publication of an "Official Gazette," and four constitutional amendments, the first of which

[1] For documents and other material for this article the writer is deeply indebted to Mr. William S. U'Ren of Oregon City, and to Mr. George A. Thacher of Portland, but they are not responsible for the views here expressed.

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aimed to systematize the exercise of the legislative power within the state; the second, to centralize administrative responsibility on the models of the business corporation and of the federal executive; the third, to secure a similar centralization of responsibility in county government; and the fourth, to secure certain reforms in the state judiciary. Throughout them all, the avowed purpose was to "maintain the people's direct and supreme power, by the initiative, referendum and recall, to make laws and discharge the public officers as well as elect them"; and the intention was announced of forming a "People's Progressive Government League" of four or five hundred citizens, to present such measures as might be agreed upon.

In January, 1910, under the same auspices, a second pamphlet was issued, in which the proposals before advanced were restated and modified in accordance with the criticisms and suggestions which they had elicited. Some clauses were cut out; some new features were stressed; and much space was devoted to argument upholding the theory and practice of "people's rule." Some months later there were circulated, for signatures, four initiative petitions, in the elaborate form prescribed by law, prepared by the "People's Power League." The two most radical projects—those designed to centralize administration in the state and in the county—were omitted, for signs of reactionary revolt were multiplying, and it was deemed wise to concentrate the campaign.

The first place was given to a bill to extend the Direct Primary Nominating Elections Law so as to include presidential campaigns and nominations.[1] This measure provided that in the year of a presidential campaign, on the forty-fifth day before the first Monday in June, there should be held the Oregon primary nominating election, at which every voter should have the opportunity to "vote his preference . . . for his choice for one person to be the candidate of his political party for president, and one person to be the candidate of his political party for vice-president of the United States," either by writing the names of such persons in blank spaces or by

[1] Adopted by the people, *infra*, p. 59.

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making a cross before the printed names of the persons of his choice. At this election votes might be cast also for delegates to the national nominating conventions, and for presidential electors, by a method intended to secure proportional representation. The expenses of the men thus selected as delegates to the national conventions were to be paid from the state treasury, up to the limit of $200 for each delegate. The proposed law accorded to each person regularly nominated for president or vice-president of the United States by a political party, recognized as such by the laws of Oregon, the use, *gratis*, of four pages in the State Campaign Book, wherein he, or his duly accredited representatives or supporters, might set forth the reasons why he should be elected. Equal spaces were made available to persons nominated to be delegates to a national convention or presidential electors, and to any qualified elector of a political party who might favor or oppose the nomination of any person of his own political party as its candidate for president or vice-president; but each of these unprivileged characters was to pay at the rate of $100 a page for this "leave to print"—a regulation which might with excellent effect be applied to *post mortem* issues of the *Congressional Record*.

A second constitutional amendment put forward by the People's Power League proposed certain changes in the state judiciary.[1] It provided that the judges of all courts should be elected for a term of six years; allowed the supreme court in its discretion to take original jurisdiction in *mandamus*, *quo warranto* and *habeas corpus* proceedings; and introduced the provision that "in civil cases three-fourths of the jury may render a verdict." It prohibited re-trial of any case, "unless the court can affirmatively say there is no evidence to support the verdict." In case of an appeal, it provided for affirmance of judgment, notwithstanding any error committed during the trial, provided the supreme court was of the opinion that the judgment was such as should have been rendered; and it directed that, if the supreme court should be of the opinion that it could determine what judgment should have been entered in

[1] Adopted by the people, *infra*, p. 59.

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the court below, it should enter such judgment. As originally proposed, this measure provided that "only such opinions of the supreme court shall be printed as decide new questions of law, or the meaning and construction of the statutes and the Constitution of Oregon and of the United States, or that reverse former decisions of the court." But that provision was pruned down to the following: "At the close of each term, the judges shall file with the secretary of state concise written statements of the decisions made at that term." This amendment left unchanged an unusual feature of the Oregon constitution: "Public officers shall not be impeached; but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office and such further punishment as may have been prescribed by law."

A project more characteristic of the "people's rule" movement was a further measure, which was proposed by initiative petition, providing for the establishment of a board of three "people's inspectors of government,"[1] to be elected for a term of two years by a method intended to secure proportional representation. These censors were to devote their time exclusively to the performance of their official duties. They were "to have at least one of their number present at all times at every session of each house of the legislative assembly, and to be watchful for any defect or imperfection in the state and local systems of government." Upon demand of one member, the board was required to investigate and report on the management of any public office or any institution supported wholly or in part by public funds; and wide powers were given to the board in order to enable it to ascertain facts pertinent to its inquiry. The results of such investigations were to be published in the "Oregon Official Gazette," a publication which was to be issued at least every two months, and was to be mailed at public expense to "every head of a family who is a registered voter, and every registered voter who is not a member of a family." To others, the subscription price was fixed at one

[1] Rejected by the people, *infra*, p. 58.

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dollar a year. The proposed law required the board to publish in the Gazette, without unnecessary delay, not only their own reports but a great variety of specified documents relative to government, *e. g.* "all publications that may be required by law to be mailed to every registered voter."[1] Every department of the state or of any county or municipal government therein was to be subjected to the scrutiny of the inspectors. The proposed law insisted that such investigation and publication should be "solely for the information of the people without motive or desire for personal or partisan advantage," and forbade the publishing of "any malicious, libelous or personally abusive communication"; it was, however, specifically required that they should publish "any criticisms or complaints, not exceeding two hundred words each, of their own official acts." The law provided that these inspectors should be elected biennially, beginning in 1912. For service before that date, a temporary board was to be appointed by the governor. He was to call for three recommendations of nominees from each of the following bodies: the executive committee of the State Grange, the executive committee of the Oregon State Federation of Labor and an assembly of the presidents of the boards of trade and commercial organizations of the state; and he was to name as a member of this temporary board one of the three nominees submitted by each of these bodies. If the framers of the bill put this forward as a model for future boards, it is of interest to note the proportionate influence here allotted to different elements in the population in the forming and executing of public opinion.

By some accident, no specific salary for the inspectors was mentioned, although it was expressly declared that the board "shall not apply to the legislative assembly for any appropriation. It is intended that these inspectors shall be independent of all other officers and powers, except the people of Oregon." The sum of not more than $15,000 was to be expended by them for expert accountants and other assistants in

[1] If the Oregon Campaign Book could thus be brought out as an issue of an Official Gazette, it would be entitled to second class postal rates. On the last issue, that would have involved a saving to the state treasury of about $2500.

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making investigations, but the total expense incurred for salaries and other charges of the board and for the publication of the Official Gazette was not to exceed the sum of one dollar for each registered voter in Oregon. In the original proposal and in the revised proposal of January, 1910, was a provision giving the inspectors a certain discretion in determining what matter should be admitted to the Gazette free of charge, *viz.*: "If any citizen or officer shall offer a communication which the board does not consider of sufficient interest for publication, he may pay at reasonable column rates, to be fixed by the board, for the publication of not exceeding three columns in any issue." This provision did not appear in the measure finally submitted, in which the inspectors were apparently required to insert any communication which a citizen might submit, unless they could exclude it on the ground that it was "malicious, libelous or personally abusive," or, possibly, on the ground that, after publishing the official material mentioned or indicated in the law, they would not be able to print the citizen's contribution without exceeding the limitation imposed upon their total expenditures.

By far the most elaborate and important, however, of the measures put forward by the People's Power League was one which contemplated a systematic reconstitution of the legislative power, and which also was proposed by initiative petition.[1] By piecemeal and unrelated acts of legislation, Oregon—followed by quite a number of other American states—has patched the new cloth of the initiative and referendum upon the old garment of its constitution. Here at last was a project which, in the opinion of its advocates (who have been the successful champions of direct legislation), would establish logical and effective relations between the law-making work of the people at the polls and that of the representative legislature.

At the outset, this proposed constitutional amendment formulated the powers reserved by the people to themselves, namely, the initiative and the referendum. Initiative measures should be put before the people on demand of not more than eight per

[1] Rejected by the people, *infra*, p. 58.

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cent or, at the most, 50,000 of the legal voters, and should be filed with the secretary of state at least four months before the election at which they were to be voted on. The referendum must be applied to any constitutional amendment, and might be ordered upon any act of the legislature by five per cent or, at the most, by not more than 30,000 of the legal voters. It might be applied to individual items of acts of the legislature; and any increase in appropriations for the maintenance of the state government or of the institutions supported by state funds was to be subject thereto. In order that the referendum might have full scope, it was provided that, except in cases of emergency, no act of the legislature should take effect until ninety days from the end of the session at which it was passed. Inasmuch, however, as three months' delay might at times prove disastrous, it was provided that any measure (except one creating or abolishing some office or changing the salary, term or duties of some officer) should go into effect immediately upon its passage, provided three-fourths of all the members elected to each house "shall vote, on a separate roll-call, in favor of the measure going into instant operation because it is necessary for the immediate preservation of the public peace, health and safety." Even such a measure might be annulled by a subsequent referendum, but it was to remain in force until the adverse vote should be declared. It was further provided that no measure approved by vote of the people could be repealed or amended by the legislative assembly, except by three-fourths vote of all the members elected thereto. Provision was also made for the use of the initiative and referendum under similar conditions in municipal affairs.

The make-up and powers of the representative legislature were next set forth. The numbers were to remain unchanged: 30 members of the Senate and 60 of the House. These were to be chosen from such districts, composed of contiguous territory, as should be provided by law; but residence within the district was not required. On the one hand, the member's position was substantially strengthened, by increasing the term of senators from four to six years and that of representatives from two to six years; but this was offset by the recall, which, on

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demand of twenty-five per cent of the voters, might be invoked not only against an individual member but against the Senate or the House or the entire legislative assembly. Recall petitions must state in not more than 200 words the reasons for such action. The filing of a recall petition requiring a general election—in other words, the formal initiation of a measure to "turn all the rascals out"—was to operate as "a complete suspension of all the power granted by the people of Oregon to the legislative assembly," until the returns should be determined.

The members of both houses of the legislature were to be elected by a novel system of proportional representation, the intent being that any one-sixtieth of all the voters of the state, voting for one person for representative, should elect him, and that any one-thirtieth should be enabled to elect their candidate for the Senate. The nomination was to be by districts, but the election by the voters of the state at large. Each candidate's name, whether for the Senate or for the House, was to be printed on the ballot only in the district in which he should be nominated; but any legal voter in any other district might vote for him, by writing his name upon the ballot or by using a sticker. Each voter, however, was to vote for only one candidate for senator and one for representative. No candidate for nomination was to be permitted to circulate his petition or pay for its circulation outside of the nominating district in which he resided. At the general election, each candidate for the legislature was to be entitled to have printed on the official ballot against his name his "platformette"—a statement in not more than twelve words of his political faith or of his pledges to the people.

In counting the vote, the total number of votes cast for senators was to be divided by 30, and that cast for representatives by 60, the resultant numbers fixing the "quota of election" for each. Then the whole number of votes received by all the candidates of each party was to be divided by this quota of election; the quotient for each party was to indicate the number of representatives' (or senators') seats to which that party was to be entitled; and that number of party candidates who should have received, each for himself, the full quota or nearest

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to the full quota of votes should be thereby elected. Any independent candidate who should receive for himself a quota of votes, or a number greater than the highest remainder of any party, should be thereby elected.

It is evident that the Swiss free-list system had received careful study. It was assumed that in most districts candidates of the more prominent parties would be put forward, but that a single-taxer or socialist, if of strongly marked personality or power of leadership, might so enlist the loyalty of supporters all over the state that they would substitute his name for those of the candidates nominated in their own districts. In making state-wide the constituency from which representatives were to be chosen, proportional representation would have been subjected to a severe strain. In the writer's opinion, the chances of its satisfactory working would be greatly increased if it were applied to districts electing not more than from five to ten members.

Vacancies, except those created by the recall, were to be filled by "seating the qualified candidate from the same party as that of the retiring officer who received for himself nearer to the quota of votes than any other candidate of his party who was not elected." This procedure is open to obvious and serious objection, particularly in view of the proposed term of six years—a term longer than that accorded to a legislator in any other American state. Party complexion may undergo great changes in such a period. There is little assurance that a Democrat who narrowly escaped election in 1892 would, by virtue of that fact, have been an acceptable Democratic representative in 1897. Republicans of the vintage of 1897 or of 1907 might need to be re-certified in 1900 or in 1910. Another defect lay upon the surface: district nomination was required although district residence was not. Doubtless, in nine cases out of ten, the representative would be a resident of his own district. But in case such a representative should die or resign during the course of his six-year term, his place would be filled automatically by the man of his party name who, possibly five years earlier and necessarily in another district, happened to have escaped election by the narrowest margin. In short, both this

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form of proportional representation and this method of filling vacancies are at fault in over-emphasizing party lines. In state relations national party lines have only a secondary and minor justification; and yet, under this plan, the party label was to determine who should fill a vacancy long years after the label's significance might have been utterly lost.

No distinction was made in the qualifications for membership in the two houses: the candidate must be a citizen of the United States, at least twenty-one years of age, and a resident of the state for at least five years before his election. It was proposed, however, to make a substantial increase in the compensation of the legislators. Under the present law, it is not more than three dollars a day, with the further stipulation that the entire *per diem* allowance shall not exceed $120 in any one regular biennial session. Under the proposed measure, each member was to receive an annual salary of $350, together with a mileage allowance. Each house was to choose its own officers and standing committees; but the presiding officers, though elected by their respective houses, "shall not be members of the legislative assembly, nor hold any other office at the same time. They shall not appoint committees, and shall have no voice or vote on legislative business." Evidently "Cannonism" was not approved by the framers of this project. Two-thirds of each house was the exceptionally large quorum required to do business; in case either house should fail to effect an organization within five days after such quorum should be in attendance, its members were to receive no compensation from the end of the said five days until an organization should have been effected. This, however, would not prevent the recurrence of the experience of 1897, when throughout the time appointed for the session the legislature failed to effect an organization, because the requisite quorum never appeared.

A majority of all the members elected to each house was to be necessary to pass any bill. The yeas and nays must be entered at the request of any two members on any question except a motion to adjourn—on which the demand must be supported by one-tenth of those present. Strangely out of date and empty of significance in this radical measure sounds the familiar

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restriction that bills for raising revenue should originate in the lower house. There was a formidable list of acts excluded from the competence of the legislative assembly, with no less than sixteen items, including the enactment of "any local or general law extending or granting the power of eminent domain to private corporations." Painstaking effort was put forth to devise checks for the abuses most prevalent in legislative assemblies. To prevent undue haste, it was provided that bills introduced after the twentieth day of any session should not be passed at that session, unless as emergency measures; and that none but an emergency measure should be passed until it had been printed and in the possession of each house, in its final form, for at least five days. Nor was any measure to be altered or amended on its passage through either house so as to change its original purpose. Issue-dodging and the shirking of legislative duties were to be discouraged by the deduction of $10 from the salary of a member for each failure to vote on a roll-call, unless such member were excused by a yea and nay vote of a majority of all the members of his house.[1] An attempt was made to combat the evils of secrecy by the requirement that the doors of each house and of all committees should be kept open, "except only in such cases as in the opinion of either house require secrecy, but in every such case the yeas and nays shall be entered on the journal." Committees were required to be "liberal in allowing public hearings on measures; the chairman of every committee shall notify, in writing, all persons who advise the committee of their desire to be heard on any measure in its charge, of the time of such hearing."

These Oregon reformers apparently regard log-rolling as the most noxious of legislative distempers, and as a specific against it they devised the following oath, to be taken by every member:

I do further affirm and promise the voters of the state of Oregon, that during my term of office, in acting or voting as such officer upon any

[1] Those who have found American patriotism personified in the Hon. William R. Hearst may be interested to compute how such a rule as this would have worked, had it been applied to his recent service in Congress. It was reported that during the 71 days of the short session of the 59th Congress he was recorded as absent 69 days.

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measure, I will always vote solely on my judgment that the bill or resolution will or will not advance the general welfare, and without reference to the vote, action or caucus of members on that or any other measure, and without any understanding (except my public pledges to the people or instructions from the people) in any form with any member or person that I will aid or be friendly to a measure in which he is interested because he will or may be inclined to aid one in which I am interested.

As a crowning safe-guard, it was provided that seats and desks should be provided on the floor of each house for the "people's inspectors of government," if such officers should be created by law.

II. *The campaign*

Early in the spring of 1910 it became evident that the election in November would be hotly contested. The cause of the uprising was dissatisfaction with the working of the "Oregon system"—in particular, with the fetter imposed by "statement no. 1" upon candidates for the legislature, in pledging them to vote for the people's choice for United States senator. Such a requirement is of course obnoxious to the machine politicians; but it must be confessed that the "Oregon system" has shown that it may yield anomalous results, little calculated to give satisfaction to men of quite a different type—men who are firm believers in party and in party responsibility. Under normal conditions, Oregon is rated as a Republican state by a majority of about 25,000. Yet at the present time the state is represented in the Senate by one man who is said to have shown some fickleness in his party allegiance and by another who is a Democrat. It is no aspersion upon Senator Chamberlain's character or career to say—what is freely acknowledged—that his endorsement in the general election (which bound members of the legislature who had signed statement no. 1) was made possible only because the Republican party in the state was rent by faction. Some Republicans voted for Chamberlain because they preferred him to any leader of the opposing wing of their own party. Others frankly acknowledged that they voted for the Democrat in the popular election with the expectation that he could be defeated in the legislature, thus bringing the

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direct primary and "statement no. 1" into such disrepute as to lead to their repeal. While the election was in progress in the legislature, one member after another announced that, bound by statement no. 1, he should vote for Chamberlain, but under grave protest that injustice was being done by a law which dictated the election of a candidate whose popular endorsement reflected with so little clearness the real will of the people. The outcome was intolerable to many of the old-time leaders of the Republicans; and the most influential newspaper of the state came out with the declaration: "Republicans of Oregon intend to repudiate Statement No. 1. They intend to suggest in assembly or convention candidates for the primary, and will put the knife into each and all who declare for Statement No. 1." This movement made such progress that early in the summer "assemblies" convened in the several counties and in July a state "assembly" brought together some 800 delegates "to select and recommend" candidates for Congress and for the full list of state offices. But as a rose by any other name will smell as sweet, so the "assembly," as its opponents had confidently predicted, gave forth odors indistinguishable from those which had led the Oregon voters to banish the "convention." The *Oregonian*, which had stood sponsor for the assembly scheme, acknowledged that in the most important county in the state the county organization had been "too much in hands that did not have the general confidence or public respect"; and it became known that on the eve of the meeting of the assembly there had been held a secret conclave, at the office of a local corporation, attended by the representatives of large financial and commercial interests, who had looked over the whole field and had placed their stamp of approval upon a full slate of candidates. With the work of the assembly thus discredited in advance, it is not strange that in the primary election in September, despite the efforts of the Republican machine workers to put forward the assembly candidates as those alone entitled to the loyal support of the Republicans, many of these candidates met with defeat. The *Oregonian* ruefully attributed much of the disaster to "the more or less unsavory and notorious hangers-on of both state and county headquarters."

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There were other signs of an impending reaction. In the preceding session of the legislature there had been indications that the representatives of the people were not entirely acquiescent in the spirit of some recent "direct legislation." For example, the legislature referred to the people a bill providing that a convention be forthwith elected for the purpose of revising the Constitution. The People's Power League saw in this proposition a grave menace. They insisted that the initiative and referendum already provided ample machinery for making whatever changes might be desirable in the Constitution; they professed fear that the motive underlying this bill was a purpose to "get rid of the initiative, referendum, recall, direct primary and Statement No. 1"; and they reminded the voters of Oregon of alarming precedents—cases in which conventions had refused to confine themselves to the tasks imposed upon them or had promulgated a new Constitution without referring it to the people, even when their instructions clearly prescribed such reference.

The preceding legislature also aroused much criticism by referring to the people a constitutional amendment providing that state senators and representatives should be elected by districts choosing only one member each. The very object of this proposal, it was alleged by its critics, was to make proportional representation impossible. Yet the voters of Oregon had committed themselves to the principle of proportional representation, only two years before, by a vote of more than three to two.

With a vote on these menacing measures in prospect, and with the assembly candidates already in the field, Oregon politics early developed heat. Two months before the November election there appeared and was mailed to every registered voter in the state the official Campaign Book—the Oregon voter's political primer or cram-book for the coming examination in government, This year it was larger than ever, containing 208 pages. This book shows the voter, first, precisely how each measure will appear upon the ballot, thus:

Proposed by Initiative Petition,

Women's tax-paying suffrage amendment, granting to all taxpayers, regardless of sex, the right of suffrage.

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300. Yes.
301. No.

The "yes" and the "no" under each question are accompanied, as indicated above, by a certain assigned number, by which it can be referred to; and voters are exhorted from the stump and in the press to vote "yes, on 300" *etc.* Next, the Campaign Book presents the full text of every measure which is to come before the voters. And, finally, there are appended such arguments for or against any measures as interested persons may file with the state printer, such persons paying the bare cost of the additional printing and paper. Of the thirty-two measures presented in the 1910 book, only one was unaccompanied by something in the way of argument, while some called forth as many as three such contributions. Two-fifths of the volume—85 of the 208 pages—were taken up by these attempts to persuade the voters.

In regard to candidates, also, the state acts as a distributor of information. In the first place, the would-be candidate may file with the proper official a statement of his views, to the extent of 100 words; and he may have printed against his name on the nominating ballot the quintessence of his creed, in not more than twelve words. Then, under a law of 1909, pamphlets compiled by the secretary of state are issued, containing biographical sketches and portraits of candidates for party nomination, together with the arguments filed favoring and opposing certain of them, the expense of such political advertising being paid for by the candidate or by such of his representatives as sign their names to it. Some of this material for the last election was highly interesting, running all the way from a dignified setting forth of the candidate's convictions and pledges, on the one hand, to slangy bombast and demagogy of the rankest nature, on the other.

Public speeches and debates were frequent. As the election drew near, the press from day to day published editorials on the leading issues, together with lengthy letters from interested citizens, much as the numbers of the Federalist—to cite an august precedent—were published in the months while the rati-

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fication of the federal Constitution was in question. Thousands of privately printed leaflets and pamphlets were distributed, and more use than ever before was made of space in the newspapers; sometimes blanket pages, plainly marked "paid political advertisement," were devoted to a single question. To the majority of voters in Oregon—as in every other state—politics is of course largely a game of "follow my leader"; but it would have been difficult for any Oregon voter to have remained totally ignorant of the principal points involved in the more important measures on which he was to vote. Moreover, in such a state of ferment and heated discussion the leaders are forced to come out into the open and show where they stand.

III. *The election*

But in Oregon, with the dawn of election day, "the tumult and the shouting dies," for election proceedings are regulated by a most stringent Corrupt Practices Act—an act, it is well to recall, which was rejected by the legislature but was then forthwith put before the people by initiative petition and by them enacted. The "Oregon system" has thus supplied one of the most essential conditions for its own successful working. Election day in Oregon, since 1908, is a political Sabbath, holy unto the state. The time for argument and influence is past. The "thou shalt not" of the law applies, not only to money payments to affect votes, but to paying the expense of transportation of voters to or from the polls and to buying, selling, giving or providing "any political badge, button or other insignia to be worn at or about the polls on the day of election, and no such political badge, button or other insignia shall be worn at or about the polls on any election day." Neither shall any person "at any place on the day of any election ask, solicit or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate . . . or any measure submitted to the people," under penalty of a fine of not less than five dollars nor more than one hundred dollars for the first offence.

Assuredly the Oregon voter needed to be freed from all distractions, on the eighth of last November, if he were consci-

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entiously to do his whole duty as a citizen. It may be doubted whether any voters were ever before confronted by so complicated a task as that presented by the Oregon ballot of that day. For example, the voter in precinct no. 9, Multnomah county—a Portland precinct—had to make his choice, between candidates named upon the ballot to the number of 131, for the filling of 45 federal, state and county offices—and there were blanks where he might write in the names of yet others. And when he had recorded his choice among this host of candidates, his task was hardly begun; for in Oregon the voter is a lawmaker, and it may be that more important legislation was to be enacted that day than in Salem's "halls of legislation" during the next two years. Mr. Bryce tells us that the Constitution of the United States with all its amendments may be read in twenty-three minutes. Merely to read aloud the titles of the measures upon that Oregon ballot would take the voter nine minutes. Cutting out all the explanatory headings, the mere titles require something like 1900 words—approximately three-sevenths of the number of words in the federal Constitution. Obviously the voter must not postpone his weighing of arguments and the making-up of his mind as to issues until he gets the ballot in his hands, else the election would hardly yet be over. Upon that ballot were thirty-two distinct projects of direct legislation—eleven of them involving amendment of the state Constitution—placed there by three different processes. One, an act increasing the salary of a certain judgeship, was a referendum ordered by petition of the people upon an act passed by the last legislature. Six of the measures were referred to the people by vote of the representative legislature. The other twenty-five measures were proposed by initiative petition. These last mentioned measures, of course, either had never been passed upon by the legislative assembly or—as in at least one instance—had met with defeat at its hands.

IV. *The outcome*

What of the results of the election? In the first place, it is to be noted that the culmination of so long and so bitter a campaign brought out a very heavy vote. The record shows that

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the state contains about 135,000 registered voters. The total number of ballots cast, as shown by the poll-books, was 120,248. The contest for governor resulted in the election of Oswald West, the Democratic candidate, by a vote of 54,853—a plurality of 6102 over Jay Bowerman, the Republican whose nomination had been forced by the "assembly." The Socialist candidate polled 8059 votes, and the Prohibitionists 6027. The victory of the Democratic candidate is the more significant from the fact that no other Democratic nominee was elected; indeed, in almost every other instance, the vote for the Republican candidate was double that for the Democrat. For the offices of state treasurer, attorney-general and state engineer the Democrats presented no candidates of their own; the Socialists, on the other hand, made nominations for all of these offices and polled votes ranging from 13 to 16 per cent of the vote cast—an exceptionally high percentage for the Socialist vote in a state election, but doubtless cast here for candidates acceptable to many outside of the Socialist ranks.

Of the thirty-two projects of legislation, the ballot-booth lawmakers enacted nine and rejected twenty-three. But that fact, of itself, is of little significance, except as indicating that direct legislation is to a degree conservative. In attempting to get at the real significance of this remarkable election, it is necessary to note how the voters dealt with the widely diverse types of projects submitted for their approval. One of the most eloquent apostles of the direct-legislation movement, in a recent address, laid great emphasis upon the proposition that direct legislation is a safe and sane method of law-making, because, "if the voters do not understand a proposition that is placed before them, they will simply vote against it." The writer submits that psychological theory and the results in this election agree in showing that it is quite as likely that the voters who do not understand a proposition will not vote upon it at all; and their mere abstention may result in verdicts that are far from safe or sane.

In the present election, the total number of votes cast for the several measures varied from 73,321 to 105,215—from 60 to 87 per cent of the total number of votes cast in the election.

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No one of the measures adopted received the approval of a majority of that total. Leading by more than 10,000 all the other measures in their power to call forth votes were the three propositions which related to the liquor traffic. In recent years Oregon has had a local-option law, under which the sale of liquor has been prohibited in the majority of the counties. This encouraged the anti-saloon men to hope that they might capture the urban counties by the rural vote for state-wide prohibition, and orators were imported, even from the Atlantic states, to wage the battle against the saloon. To oppose this project, the "Greater Oregon Home Rule Association" was formed, and through its influence a constitutional amendment "giving to cities and towns exclusive power to license, regulate and control, suppress or prohibit the sale of intoxicating liquors within the municipalities" was adopted by the close vote of 53,321 to 50,779. On the other hand, a proposed amendment prohibiting "the manufacture and sale of intoxicating liquors and the traffic in them within the state" was rejected, 43,540 to 61,221; and a drastic proposal to "prohibit, prevent and suppress the manufacture, sale, possession, exchange or giving away of intoxicating liquors . . . within the state" was rejected by a vote of 42,651 to 63,564. In contrast with these hotly contested liquor questions was a brief and vague tax measure, on which 32,000 fewer men expressed an opinion than on the local-option amendment.

In considering the rest of the measures, many may be dismissed with a word. Of the eight bills for creating new counties, every one was rejected. The total votes on these questions ranged from 77,317 to 85,252. In not one of the eight cases was the adverse majority less than 35,000, and in several instances the rejection was by a vote of nearly five to one. Apparently, although these measures were debated in the Campaign Book, the great majority of the voters considered them as purely local issues, with the presumption against their merit. The large number of such measures upon the ballot is accounted for by the fact that the present law of Oregon does not allow counties to be created or their lines to be changed by an ordinary act of the legislative assembly; every such law must be

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voted upon by the people. In view of the voters' marked disposition to defeat such propositions, it would seem that some highly desirable changes may prove almost impossible of attainment. At this same election, a bill which provided for the change of existing county lines and for the creating of new towns, counties and municipal districts by a majority vote of the legal voters of the territory affected was rejected, 37,129 to 42,327.

Each of three bills providing for the permanent support and maintenance of state normal schools called forth large votes, ranging from 87,099 to 90,235, but only one of them was passed. This result is of little significance, as the issues were almost purely local. By far the heaviest adverse vote—a majority of 58,368—was cast against a proposal for the payment to the judge of a certain court of $1000 annually by Baker county, in addition to his salary from the state. It is said that this proposal was not without precedent and merit. The enormous vote against it is to be attributed mainly to the proverbial disposition of the voters to keep salaries and other expenditures low—a tendency which may have had its influence in the defeat of the normal-school bills also. The state was here dragged into a local quarrel, inasmuch as this measure was an act of the legislature which had been held up by a referendum petition. Another issue little calculated to be effectively handled by direct legislation was the bill, proposed by initiative petition, prohibiting the taking of fish from the Rogue River except by hook and line. The interests of the up-river and down-river people were here in conflict. The initiative petition was originated by an association of up-river men, who charged that the salmon were being exterminated by commercial fishing, and that it was for the interest of the state to preserve angling on that river. On the other hand, the representatives of a canning concern, which had made very heavy expenditures upon a plant at the mouth of the river—a plant which the proposed law would have turned into junk—petitioned the probate court (for the cannery was part of an unsettled estate) for permission to spend $10,000 to print and distribute to all voters in Oregon a circular setting forth facts as to the originating of the initiative petition

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and showing its errors. This request being denied, they inserted in the Campaign Book an argument minimizing or denying the points made by their opponents; an argument was also presented by the fishermen of the county in which the cannery is located, setting forth their interests in that industry; while the Rogue River Fish Protective Association came to the defense of their petition with a third argument. So hopelessly contradictory were these opposing statements of fact and of interest that the *Oregonian* advised citizens to vote "no" as the safer course. Nevertheless, the proposed prohibition of commercial fishing was adopted, 49,712 to 33,397. Two of the three counties most interested voted against the prohibition by large majorities, but the third and most populous—an up-river county—voted more than five to one in its favor. Whichever way the decision had turned, there would have been little presumption in favor of its justice. The question was one which required the weighing of expert testimony as to the actual effects of commercial fishing as practiced in the Rogue River. It was impossible for the voters to form a well-grounded opinion from the interested arguments presented in the Campaign Book, and it was absurd that such a question should be decided by the "yes" or "no" of thousands of voters who never were within hundreds of miles of the scene of operation.

The matter of employees' indemnity for injuries sustained in the course of their employment came before the voters in two forms. By a vote of 32,224 to 51,719 they rejected a bill, proposed by initiative petition, for a commission of nine men, named in the bill, to investigate the subject and submit a draft of a bill to the legislative assembly. In the Campaign Book this measure was opposed by the Oregon State Federation of Labor on the ground that such an investigation was unnecessary, inasmuch as the question had already been thoroughly investigated in other states, especially in New York. The Federation further alleged that this project was a mere blind, instigated by the Employers' Association, through whose influence an indemnity act had been blocked in the last session of the legislature. This labor organization was itself sponsor for a measure requiring protection for persons engaged in hazardous employ-

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ments, defining and extending the liability of employers and providing that contributory negligence should not be a defence, although it might be taken into account by the jury in fixing the amount of the award. This was approved, 56,258 to 33,943. This measure is in line with the position often taken by Mr. Roosevelt and by such students of the labor movement as the late Carroll D. Wright, who have insisted that under modern industrial conditions the "fellow-servant rule" is an anachronism which often must work grave injustice. But this is a complicated law, making very drastic demands of employers, subjecting them to fine or imprisonment or both in criminal proceedings for violation of the law, and giving dependants of an employee killed in the course of his employment "a right of action without any limit as to amount of damages which may be awarded." Whether it is for the best interests of Oregon industries and of the employees themselves that these specific and heavy burdens be devolved upon the employers remains to be seen. It took the voters, however, not more than one second apiece to declare by a majority of 23,000 that this shall be the law.

By substantial majorities, two measures of general interest were passed, the one providing for the location, construction and government of a branch insane asylum (50,134 to 41,504), the other authorizing counties to exceed the $5000 debt limit for the purpose of building permanent roads within the county, provided such debts are incurred on the approval of a majority of those voting on the question (51,275 to 32,906).

One of the most radical measures submitted authorized the state or any county, municipality or railroad district to purchase or construct railroads or other highways within the state, and to lease or operate the same. It has been suggested that the real object of this measure, which was referred to the people by the legislature, was to secure better service from the railroads by threat of state action. It was rejected, 32,844 to 46,070.

The pocket-nerve of the American voter is proverbially sensitive. Upon the ballot were three measures relating to taxation. All of them were important, yet not one of them polled a large

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vote; in fact, of the two which were rejected, one stood at the very bottom of the list of thirty-two and the other held thirtieth place in the voters' interest. The first of these three was a constitutional amendment, referred to the people by the legislature, "directing a uniform rule of taxation except on property specifically taxed, authorizing the levy and collection of taxes for state purposes and for county and municipal purposes upon different classes of property, and appropriating state taxes as county obligations." This was rejected, 31,629 to 41,692. The second was a proposed constitutional amendment, also referred to the people by the legislature, to omit from the Constitution the words "and all taxation shall be equal and uniform" and to insert in lieu thereof the words "taxes shall be levied and collected for public purposes only, and the power to tax shall never be surrendered, suspended or contracted away." This amendment also was rejected, 37,619 to 40,172. Students of Oregon taxation methods have asserted that these two measures would open the way for much-needed reforms. Both measures had been passed by the legislature in response to pressure from the Granges, and both were supported in the Campaign Book by an argument submitted by the Oregon State Federation of Labor and the Central Labor Council of Portland and Vicinity. But this argument shed little light upon the precise effects to be expected from the adoption of the proposed changes. If clear-headed tax-reformers believed that these measures were of merit, they should have secured for them more effective exposition and advocacy. The third tax measure called out a larger vote and was adopted by a small majority, 44,171 to 42,127; yet its merit is probably more dubious than that of either of the others. This constitutional amendment was proposed by initiative petition. It provides that the people of each county may "regulate taxation and exemptions within the county, regardless of constitutional restrictions or state statutes, and abolishing poll or head tax." This amendment was advocated in a brief argument, which covered the two preceding measures as well, by the above-mentioned labor organizations. Principal stress was laid upon its abolishing the unpopular poll tax, and it is freely asserted that the mere inclusion in the title of those words

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made a sufficient appeal to prejudice against that minor feature of the tax system to secure the small majority by which the amendment was adopted. But there was, in fact, no poll tax in Oregon in 1910. It had been abolished by statute in 1907, and there was not the slighest prospect of its being revived. It was apparently resurrected in this title merely as a bogie, to distract the voter's attention. The other point most emphasized by its advocates was the opportunity which this law would afford to each county to try experiments on a small scale with different systems, from which experience other counties might profit. It was further urged that local regulation of taxation would thus secure to the people "the direct power to manage their own pocket books." Nowhere in the measure itself nor in the argument printed in the Campaign Book does the ulterior object of the measure receive mention. That object however, was well known and generally recognized; it was to make possible the adoption of the "single tax," piecemeal, by the several counties. In 1908 the single-taxers put before the people a modification of the Henry George program; the measure was frankly and ably argued in the Campaign Book, and it was rejected by a vote of nearly two to one (32,066 to 60,871). This year the advocates of the "land-value tax system" pursued a shrewder but less ingenuous policy; they allowed the labor organizations to pull out of the fire some no-poll-tax chestnuts, which are found to have a strong single-tax flavor. In the press and on the stump the real object of this measure was brought out, and it was advocated in a remarkably effective campaign pamphlet, of which Mr. W. S. U'Ren was one of the joint authors. It is singular that none of the conservatives, who since the election have been deploring the adoption of this constitutional amendment, had interest enough to present their arguments in the Campaign Book, where they would have reached every voter. Opinions differ as to the outcome. At the previous election in Multnomah county, 1908, the single-tax proposition was defeated by only 483 votes in a total of 22,139. This would suggest that by the conversion of some three or four hundred voters to the single-tax creed, the most populous county of the state may be made the first important laboratory

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for testing the Henry George theories. Naturally the single-taxers are jubilant[1]; but in the rest of the community—even among those not indisposed to shift upon land values a far heavier proportion of the tax burden—there is a grave feeling of apprehension. It is felt that no one county can safely stand aloof and by itself in financial relations in which the interests of the entire commonwealth are so closely interlinked.

The measure which called out by far the largest vote, with the exception of the liquor measures, was the "women's tax-paying suffrage amendment, granting to taxpayers, regardless of sex, the right of suffrage." So read the official title, placed upon the ballot by the attorney-general. This is the fourth time within ten years that an initiative petition has forced this issue to a vote. At previous elections the majority against women's suffrage has been as follows: in 1900, 2137; in 1906, 10,173; in 1908, 21,649. This year the suffragists took a new tack, emphasizing strongly the grievances of the many taxpaying women of the state, and closing their appeal thus: "Oregon has now the opportunity to lead the world in a safe and conservative extension of the elective franchise to every woman who is taxed to support the government, and we earnestly hope we shall not be compelled to repeat this appeal in 1912." But the voter who read not merely the ballot title and the appeal but also the law itself found that there was a glaring discrepancy between them; for the proposed amendment made a positive and sweeping grant of the suffrage to "every citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election" *etc.* Only after this positive grant had been fully set forth was there added: "It is expressly provided hereby that no citizen who is a taxpayer shall be denied the right to vote on account of sex." As the opponents of the measure said, in their Campaign Book argument: "The last clause in the proposed amendment about taxpaying women is pure buncombe. It adds nothing to and detracts nothing from the preceding provisions." The placing of the above title upon

[1] Mr. Joseph Fels, the leading single-tax propagandist, has already gone to Oregon, and the single-tax program is openly announced as the chief issue for 1912.

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such a measure suggests some interesting questions. What is to be said of the legal acumen of an attorney-general, who could either formulate or accept such a misleading title? As for the women who presented this as "a safe and conservative extension of the elective franchise to every woman who is taxed," if they were not clear-headed enough to see that the law would at the same time extend the suffrage to every woman who is *not* taxed, provided she were a citizen of the required age and residence, their addition to the electorate would not tend greatly to raise its intellectual plane; if, on the other hand, as a last resort, they were willing to win the suffrage by a shabby trick, they would bring to the polls little of that elevation of political morality which they have often claimed would be their chief contribution to political life. The voters' verdict, for the fourth time, was against woman's suffrage, 35,270 to 59,065.[1]

There remain to be considered the measures which most closely concerned the future of "people's rule" in Oregon and of the "Oregon System." By the legislature there were referred to the people two measures which were backed by much the same influences which instituted the "assembly" and forced Bowerman's candidacy as the Republican nominee. The first was a measure providing for a convention for the purpose of making a general revision of the Constitution. This was antagonized by the People's Power League, not only because it was

[1] The Oregon suffragists' initiative petition for 1912 has already been filed (January, 1911).

It is singular that on the same day (November 8), in the adjoining state of Washington, the voters should have adopted a woman's suffrage amendment by a considerable majority. On the eve of the election, Alfred Brown, who had been on the stump in Washington for woman's suffrage, predicted its victory at the polls, adding: "The ambiguous wording of the amendment will poll many votes for suffrage, since the words 'woman's suffrage' are not mentioned. We . . . often vote 'yes,' when we don't know what we are voting for." Boston *Herald*, November 5, 1910.

The suffrage was extended to women in Washington Territory by a law of 1883, entitled "An Act to amend sec. 3050, ch. 238 of the Code of Washington Territory." Under this, women voted in Washington till 1887, when this law was held to be unconstitutional, because its object was not expressed in its title, as required by the Organic Act. "Females, then, are not voters in this territory." Harland *v.* Territory of Washington, 3 Washington Territorial Reports, 131. It is a singular coincidence if woman's suffrage has now been restored in Washington by means of a ballot title purposely evasive: "relating to the qualifications of voters."

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needless and would occasion unnecessary expense and disturbance of business, but also on the ground that it was a scheme for getting a Constitution adopted and "proclaimed" which would do away with the initiative, the referendum, the recall, the direct primary and "statement no. 1." It was defeated, 23,143 to 59,974. The second measure proposed an amendment of the Constitution providing a separate district for the election of each senator and representative. This was an obvious attempt to prevent the carrying-out of the principle of proportional representation, adopted by the Oregon voters by a large majority, only two years earlier; and it was rejected by a vote of 24,000 to 54,252.

The People's Power League succeeded better in defending the ground already won than in capturing the new fields toward which they had directed their campaign. Of the four measures which they formulated by the elaborate process described above, and to which they gave earnest support in the Campaign Book, in the press, in pamphlets and on the stump, the two more radical measures were rejected. Of these, the one which suffered the worst defeat was the proposed law creating the board of "people's inspectors of government," who were also to be charged with the duty of publishing the Oregon Official Gazette. This measure was loosely drawn; it sought to create an office which was an absolute innovation; and some of its features were calculated to arouse distrust. The newspapers ridiculed and opposed the institution of any such board of recording angels for functions which the press assumes to perform, and the measure was rejected, 29,995 to 52,538. Defeat, though by a closer vote, 37,031 to 44,366, was also the fate of one of the most carefully thought out and comprehensive measures upon the ballot, namely the proposed constitutional amendment which essayed to redistribute the legislative power in a commonwealth where the initiative and referendum have received unprecedented extension. There was no measure upon the ballot of equal political interest, and none of which the operation would have commanded, in anything approaching the same degree, the attention of the country. It would have introduced a variety of untried correctives for legislative abuses which are

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widespread—the gerrymander, tyrannical rules, absenteeism and log-rolling.

By a still closer vote, 43,353 to 41,624, the provisions of the direct primary law were extended to presidential nominations. On the nineteenth of April, 1912, accordingly, each voter of Oregon will have a formal opportunity to designate his personal choice of candidates for president and vice-president of the United States; later, he may take part in nominating directly candidates for presidential electors, and in electing, under a system of proportional representation, delegates to the national conventions. Men of character and not merely of cash may stand a better chance of being elected delegates, since the state is to pay the expenses of each, up to $200. Space to the extent of four pages will be available in the State Campaign Book for setting forth the reasons why each of the several candidates for any office to be voted for by the voters of the state at large should be elected. The senatorial and congressional candidates must pay at the rate of $100 a page, but "no charges shall be made against the candidates for president and vice-president of the United States for this printed space." Four pages of free political advertising are therefore to be available for each regularly nominated presidential candidate in 1912. It may be of interest to several recently elected governors of eastern states to know at once that the Oregon Campaign Book runs about 600 words to the page.

By a substantial majority, 44,538 to 39,399, the voters adopted the amendment aiming at reforms in the administration of the law. The most significant changes are the abolition of the grant of new trials on mere technicalities and the substitution of a three-fourths majority for unanimity in the rendering of a verdict by a jury in civil trials.

As the smoke of the contest clears away, it is evident that "people's rule" has strengthened its position. In a state normally Republican by 25,000, the election of a Democrat by a plurality of 6000 over the Republican forced upon his party by the "assembly" can have no other meaning than that the rank and file of the voters resent the attempt to emasculate the direct primary and the "Oregon system." The rejection of

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the proposed constitutional convention indicates that the voters are confident that needed changes can be made by the initiative and referendum, and that they do not propose to run any risk of losing those powerful agencies of public opinion. They rejected the single-district measure, because they had already committed themselves to the principle of proportional representation, although they were not yet ready to accept the application of it submitted to them at this election. In approving the reform of the judicial system and the extension of the direct-primary law, they were following the same leadership which in the past ten years has made Oregon the most interesting political experiment station in the country and has conferred upon her people a greater degree of direct self-government than is to be found in any other American commonwealth.

But does this "new birth of democracy" promise permanence of the good and progress toward the better? It must be confessed that the election just past has given its notes of warning. In the first place, the ballot was a preposterous thing. "It's like voting a bed-quilt" was the comment of one of the policemen at the polls. Experience will certainly prove that the "short ballot" movement and the "people's rule" movement must go together. The voter's task must be made reasonable. Not even the allowing of two months for the conning of a Campaign Book can make it reasonable to expect that the voters, at a single election, will choose with discrimination forty-five officers from a list of 131 candidates and then vote with intelligence upon thirty-two measures of every variety and grade of importance. It is generally conceded that a considerable proportion of the measures were absurdly unsuited to be voted upon by the people of the entire state. This was certainly the case with the eight county bills; the three normal-school bills probably belong in the same class; and at least two other measures were of little general interest. The men who have had most influence in introducing "people's" rule in Oregon are not blind to this defect. In the first draft of the measure for reconstituting the legislative power there was a provision that the number of direct-legislation measures to be voted on at any one election should be limited to twelve, and this clause was

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strongly supported by argument from theory and from Oregon experience. It was found, however, that this proposed limitation upon the voter's power was unpopular, and it was accordingly thought best to cut it out, lest it should imperil the entire measure. The Oregon voter has found that he can make laws, and he is little impressed by the argument that he would do this work better if he attempted less of it at one time.

The experience of this election, furthermore, has proved the need of attention both to the psychology and to the ethics of title-writing. One measure, said to have been of genuine merit, is believed to have been defeated because its title included a doubt-raising clause, which had been successfully avoided in the text of the law itself. Another measure of dubious merit was passed, probably because the title, while silent as to the main intent of the law, made a successful appeal to an exaggerated popular prejudice against a defunct poll tax. Direct legislation is not the spontaneous registering of the individual voter's matured judgment as to the best method of dealing with a given problem; the voters simply say "yes" or "no" (or say nothing) to specific proposals originated, framed and phrased—and every step in the procedure is of consequence—for them by some one else. By whom? For what? These may at times prove disquieting questions. For example, not one of the three tax measures upon the November ballot was drawn in such language as to make its intent clear and unmistakable; nor was this lack supplied by any enlightening argument in the Campaign Book, the one argument there submitted, in joint advocacy of the three, being in tone and in logic little calculated to serve as the basis for forming a candid judgment. Direct legislation will presently be giving to Oregon a poor travesty of "people's rule," unless to the framing of laws and to the phrasing of their titles there is brought a keener intelligence and a more sensitive conscience than were responsible for the law intended to secure the piecemeal introduction of the single tax and for the "women's taxpaying suffrage amendment." As one of the writer's correspondents puts it: "It is quite clear that popular legislation can be worked only by 'simplifying' issues; and the further this goes, the more important becomes

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the real initiative of the irresponsible persons, whether patriots or schemers, who formulate the 'simplified' issues."

On the whole, considering the immense complexity of the task which was set before them, it must be acknowledged that the Oregon voters stood the test remarkably well. They detected and repelled covert attacks upon their own power; they rejected measures so radical as to arouse doubts; they gave their approval to laws which, in the main, consist with and develop the system already adopted.

Critics will differ as to the merit of the several measures, and they may deride "voting by the square yard." But this much the most conservative of them must concede: in Oregon the state is not shriveling up, nor have national issues there entirely submerged state issues—two valid criticisms which Mr. Bryce passed upon American state politics in general. In the past twelve months Oregon voters have had affairs of their own to think about, which have been quite as engrossing as the tariff or the new nationalism. There has been a vitality, a genuineness in Oregon politics sharply in contrast with the state campaigns in many of the eastern states. In Oregon no man has been able to read his title clear to office in the state or at Washington by merely subscribing to the creed of some leader in one of the national parties; he has had to face the question: "What do you stand for, on these definite issues regarding the carrying on of government in Oregon?" With keen interest the voters have been grappling with the problems—political, industrial, educational, financial—of self-government within their own state. A genuine campaign of education has been in progress, which can not fail to produce important and enlightening results, quite above and beyond the verdict rendered November 8 upon the various points which were at issue during the preceding months of debate.

GEORGE H. HAYNES.

WORCESTER, MASSACHUSETTS.

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FEDERAL INCORPORATION

THE POWER OF CONGRESS TO CHARTER INTERSTATE COMMERCE CORPORATIONS

THE main thesis of this article is that Congress has authority, first, to create commercial corporations to carry on an interstate and foreign business, to confer upon such corporations authority to manufacture articles to be passed into such commerce and to exempt all their operations and private-legal relations from any state control whatsoever; and, second, to license individuals as well as corporations for a like purpose and to confer upon them similar exemptions from state control.

This, however is, only a part of a wider power, *viz.* the power of Congress to create a system of interstate and foreign commerce and to license the production of articles to be passed into such commerce under exclusively federal control. This wider power includes also the power of excluding from such commerce all individuals or corporations not conforming to the conditions laid down by Congress, as well as all goods not produced in conformity to such conditions, it being understood, always, that these conditions must not violate constitutionally protected private rights. This power of exclusion is only incidentally referred to in the following pages, its consideration being reserved for a later discussion.

All discussion of the constitutionality of laws passed by Congress providing for the erection of corporations to carry on interstate or foreign commerce must start from the controversy which was waged with regard to the first and second United States banks, and which received its judicial determination in the case of McCulloch *v.* Maryland,[1] affirming the constitutionality of the second bank. Before considering this decision, however, it will be well to examine Hamilton's cabinet opinion,

[1] 4 Wheaton, 316.

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which convinced Washington of the constitutionality of federal incorporation as applied to the first bank. The similarity of the views of Hamilton and Marshall, often extending to a very close agreement of language, reveals Marshall's indebtedness to Hamilton. This fact gives to Hamilton's argument an almost judicial authority, in addition to its intrinsic value as the best discussion of federal incorporation to be found in our political and juristic literature.[1]

The essential basis of Hamilton's argument is to be found in the proposition—"*inherent* in the very *definition* of government"—"that every power vested in a government is in its nature *sovereign*."[2] From this fact it follows that "all the *means* requisite and fairly applicable to the attainment of the *ends* of such power" may be used in carrying it into effect, provided they are not precluded by express restrictions and exceptions found in the Constitution. Accordingly, there can be no "abstract" question as to the power of the United States to erect corporations. Such erections are an unquestionable incident of sovereign power.[3] The only limitation upon the power is found in the fact that corporations chartered by the United States must bear a relation to the attainment of those objects over which the national government has authority. An illustration of an improper object for the erection of a federal corporation is the superintendence of the police of Philadelphia, since the national government has no control over that matter.[4] Among the illustrations of proper objects are foreign and interstate commerce, because "it is the province of the Federal Government to *regulate* these objects, and because it is incident to a general *sovereign* or legislative power to *regulate* a thing, to employ all the means which relate to its regulation to the best and greatest advantage."

The power of erecting a corporation is necessarily implied in the power of regulating an object, since a corporation is but

[1] *Cf.* Farmers National Bank *v.* Deering, 91 U. S. 29. Here the court couples the reasoning of Hamilton with that of Marshall as affording justification for the principle of the National Bank Act of 1864.

[2] Hamilton's Works, Federal Edition, vol. iii, p. 446.

[3] *Ibid.* p. 448.

[4] *Ibid.* p. 450.

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a "*quality, capacity* or *means* to an end," and not "some *great, independent substantive thing*." [1] Nor is there requisite any particular degree of necessity as a means to an end, but only a "relation between the nature of the means employed towards the execution of a power, and the object of that power." Again, Hamilton formulates as a criterion of constitutionality the principle that "if the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority." [2]

Finally Hamilton cites, as a clear illustration of the validity of federal incorporation, the supposed case of a company formed for the development of a new branch of foreign trade. Such an incorporation is a means in general use among foreign countries, and, Hamilton enquires, why may not the United States "*constitutionally* employ the *means*, usual in other countries, for attaining the *ends* entrusted to them?" [3]

On the broad basis of Hamilton's argument rests Marshall's opinion, in the case of McCulloch *v.* Maryland.[4] The key to Marshall's reasoning is to be found in the proposition that the general powers entrusted to the federal government, with their vital connection with the well-being of the nation, may be regarded as carrying with them ample means for their successful execution. He points out that "the power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means." Applied to the case before the court, this means that the erection of a corporation not being forbidden, such an erection is permissible whenever "essential to the beneficial exercise of those powers." The words "necessary and proper" include "any means calculated to produce the end." [5] This meaning of "necessary" is enforced by the distinction between a constitution intended for

[1] *Ibid.* p. 451. [2] *Ibid.* p. 458.
[3] *Ibid.* p. 487. [4] 4 Wheaton, 316. [5] *Ibid.* p. 413.

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permanence and adaptability to changing circumstances and a mere legal code.[1] A narrower meaning would deprive the legislature of discretion and the power to take advantage of experience and to fit its legislation to changing circumstances. After pointing out that the "necessary and proper" clause purports, from its location in the Constitution, to be a power granted and not a limitation upon congressional authority, Marshall concludes this part of the argument with these trenchant words:

> But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.[2]

Marshall then shows that a corporation is an appropriate means for carrying out the powers entrusted to the federal government and that a banking corporation is an appropriate fiscal instrument. It should be noted here that Marshall, like Hamilton, does not regard the bank as a peculiar case standing upon any unusually strong ground, but holds rather that the power to charter corporations "may be employed indiscriminately with other means to carry into execution the powers of the government."[3]

The degree of utility or necessity is not a matter for judicial consideration. "Where the law is not prohibited and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." It may accordingly be affirmed that, where the measures of Congress

[1] 4 Wheaton, 415. [2] *Ibid.* p. 421.

[3] *Ibid.* p. 422. It will be noted that there is here no suggestion of any superior sanctity attached to a corporation which has a "political" connection with the government.

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have reasonable relation to the attainment of the legitimate objects of the federal government, their constitutionality will be recognized.

In the case of Osborn *v.* The Bank of the United States,[1] Marshall considers an argument which, he thinks, if representing the true facts regarding the nature of the bank, not only would justify taxation by the states of the operations of the bank, but would also show that the incorporation of the bank was unconstitutional. He accordingly once more examines the grounds upon which the constitutionality of the incorporation may be upheld. In this discussion some phrases appear which may easily give rise to the idea that these grounds are much more limited than we have found them to be in the above discussion of the McCulloch case, and that something in the nature of a distinctly "political" connection between the government of the United States and any corporation erected by it is essential. Careful consideration, however, will show any such idea to be unfounded, and will demonstrate the invalidity of all those arguments against any federal incorporation which are founded upon the "private" nature either of the motives actuating the company or of the operations which it carries on, provided that the purpose of the government is the facilitation of its control over, and the better regulation of, any matter entrusted to its care.

The position of appellant's counsel in this case, as stated by Marshall, was that "the right of a state to tax the bank is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and profit for its great and principal object."[2] It was alleged[3] that "banking is, in its nature, a private trade . . . the whole is a private concern; the capital is private property; the business is a private and individual trade; the convenience and profit of private men the end and object." The bank was classed with "insurance, canal,

[1] 9 Wheaton, 738.

[2] *Ibid.* p. 859.

[3] Argument of Mr. Hammond; *ibid.* pp. 766 *et seq.*

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bridge and turnpike companies," in all of which cases the corporations were alleged to be private, although "the uses may, in a certain sense, be called public." The bank was carefully distinguished from the post office, the business of which "is of a public character" and the charge of which "is expressly conferred upon Congress by the Constitution." It was alleged that, although the subordinate agents of the post office are invested with the character of public officers, the contractors who carry the mails are not, and that the horses and carriages which they use for this purpose are liable to state taxation, since they are used for the private profit of the contractor. And the case of the bank is alleged to be even more clear, since the chief use of the horses and wagons is for public business, while the public business of the bank is subordinate and incidental.

The argument for a distinction (resting upon the basis of a company's motive as being primarily or exclusively the securing of private gain) between instrumentalities of the government (using "instrumentality" in a narrow sense) and private corporations is certainly here set forth with all possible cogency. Marshall indeed grants that the conclusion reached would result from the premises assumed, but he denies the validity of the premises. The bank is to be considered "as a public corporation, created for public and national purposes."

> That the mere business of banking is, in its own nature, a private business and may be carried on by individuals or companies having no political connection with the government is admitted; but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court, in the case of *McCulloch v. The State of Maryland*, is founded upon and sustained by the idea that the bank is an instrument which is "necessary and proper for carrying into effect the powers vested in the government of the United States."

Certain phrases in the above quotation might possibly appear, *prima facie*, to support the theory that federal incorporation must be very closely limited in scope. But more careful examination will show that such an interpretation would be erroneous.

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Marshall's statement that the bank is not to be considered as a private corporation, with private gain as its principal object, means simply that the purpose of Congress in incorporating the bank was, not to aid the shareholders in securing a private profit, but rather to secure a useful means for providing for the national welfare in a matter entrusted to the care of Congress. The context, particularly the admission that banking is in its own nature a private business, demonstrates this. Furthermore, it would be absurd to understand Marshall to deny that the principal object of the shareholders was private gain. Nor can he mean, what was not true, that the principal business of the bank was directly governmental and its private business only incidental. The point of Marshall's contention is that the bank "was not created for its own sake . . . [but] is an instrument . . . for carrying into effect the powers vested in the government of the United States." Private gain is indisputably the motive of the stockholders, but the criterion of constitutionality is rather the purpose of Congress, and this is a public purpose.

A more plausible argument may be founded upon Marshall's use of the word "political." What is the true import of Marshall's distinction between banking as carried on by "individuals or companies having no political connection with the government" and banking as carried on by individuals or companies which do have a political connection? This distinction may have either of two meanings.

It may mean that the bank may be regarded as a quasi-governmental body, performing certain ordinary governmental functions which must otherwise be performed by the government itself. If this interpretation correctly represents Marshall's meaning, it does not at all follow that he means to imply that no federal incorporation is permissible where the corporation does not discharge this kind of political function. In this decision he is explaining further his opinion in McCulloch *v.* Maryland, and no such limitation is to be found in that opinion. The argument there is that federal incorporation may be used indiscriminately in the carrying into effect of the powers vested in the federal government. The power to incorporate is an in-

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cident of sovereignty, no more limited in the case of the United States than in that of the states; and the states are, of course, not limited in their creation of corporations to those which are to perform quasi-governmental functions. If anything further were needed to show that, if Marshall is using the word "political" in this very narrow sense, he is not intending to indicate a limitation upon the general federal power of creating corporations but is merely giving the most striking particular justification of the bank, corroboration is found in his assertion that "it has never been supposed" that Congress could create such a corporation as a banking corporation having no "political" connection with the government. Considering the evident close dependence of Marshall's argument upon that of Hamilton and the celebrity of Hamilton's opinion, it is past all belief that Marshall could assert that anything which formed the very core of Hamilton's argument "has never been supposed."

It might accordingly be conceded that Marshall used the word "political" in this narrow sense without at all weakening the broad basis of his own and Hamilton's arguments. It would certainly seem, however, that he used the word in a much wider sense, covering the entire field of the relation of federal incorporation as a means to the accomplishment of ends within the purview of the federal government. Thus used, "political" would be synonymous with "public," connoting the existence of a public motive. Thus interpreted, Marshall's statement means simply that any incorporation must bear a real relation to the proper regulation of some matter entrusted to the care of the federal government. It is submitted that this interpretation of Marshall's use of the word "political" is in more obvious agreement with the context, which shows it to have been an elaboration of the doctrine of McCulloch *v.* Maryland. Furthermore, it is a natural signification of a word admittedly ambiguous and capable of diverse meanings.

Marshall remarks that the right of doing a private business is essential to the usefulness of the bank; that

> if it be as competent to the purposes of the government without as with this faculty, there will be much difficulty in sustaining that essential

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part of the charter. If it cannot, then this faculty is necessary to the legitimate operations of government and was constitutionally and rightfully engrafted on the institution.[1]

This principle that whatever powers are essential, in order that a corporation may be completely fitted to serve the ends for which the government creates it, may be constitutionally conferred is of distinct applicability to the conferring of the power upon federal corporations, created to engage in interstate commerce, to manufacture the products which are to pass into such interstate commerce; since otherwise the ends which make the incorporation legitimate cannot be efficiently secured.

Marshall points out also that it is not the corporate character of the bank which exempts its operations from state control. The exemption arises because "the business of the bank constitutes its capacity to perform its functions, as a machine for the money transactions of the government. Its corporate character is merely an incident which enables it to transact that business more beneficially."[2]

Any operations of a federal corporation or licensee which are essential to the fulfilment of the national purpose for the sake of which the charter or license is granted are exempt from state control. The question of such essentiality is primarily one for legislative determination.[3] But Marshall's own criterion is simply the fact that any particular power conferred gives to the corporation a superior fitness as an instrument for the carrying into effect of national purposes. With regard to a particular argument of counsel, he points out that the acts of federal contractors in fulfilling their contracts are not within state control.

Considering the decision as a whole, it may be said that it does not at all limit the principles advanced in Hamilton's cabinet opinion and laid down judicially, in essentially the same breadth, by Marshall in McCulloch *v.* Maryland. In meeting the issue raised in Osborn *v.* The Bank of the United States, as to the effects of the motive of private gain as animating the company, it carries the argument explicitly another step in advance. Finally, in the discussion of the powers which may

[1] 9 Wheaton, 864. [2] *Ibid.* p. 862. [3] *Ibid.* p. 864.

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constitutionally be conferred in order to create a satisfactory instrumentality for the working out of proper national purposes, it affords solid ground upon which to rest the constitutionality of legislation conferring power to manufacture upon federally erected interstate-commerce corporations.

The constitutionality of the National Bank Act of 1864 was maintained by the court in the case of Farmers National Bank *v.* Deering.[1]

Aside from the question of national banks, discussion of the power of Congress to charter corporations has been occasioned chiefly by the federal incorporation of, or the grant of franchises to, railroad companies, particularly in connection with the development of the system of Pacific railroads.

In the Pacific Removal case,[2] the court held that the Union Pacific Railroad Company was "strictly a corporation of the United States." It further held that, when powers granted by the federal government are inextricably blended with powers granted by the states, the control of Congress is determinative in regard to the whole matter. In the case of California *v.* Central Pacific Railroad Company,[3] the court held not only that the company held federal franchises but also that the grant of such franchises was constitutional. It held, further, that the authority of Congress to grant such franchises does not rest solely upon its power over postal and military matters but also —and upon this ground the court laid most stress—upon the commercial power. The court said:

> It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several states . . . had authority to pass these laws. The power to construct or to authorize individuals or corporations to construct national highways or bridges from state to state is essential to the complete control and regulation of interstate commerce.

The court pointed out that under earlier economic conditions, when commerce by water was most important, many statesmen doubted the power to establish ways of communication by land.

[1] 91 U. S. 29. [2] 115 U. S. 15, 16. [3] 127 U. S. 1.

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But with the development of land commerce "a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject"—a power "very freely exercised, and much to the general satisfaction," in the creation of the Pacific railroad system.

If due consideration is given to the opinions of Hamilton and Marshall, it can hardly be doubted that, if Congress can grant franchises, it can create corporations, it being understood in either case that the end for which the power is exercised is one within the competence of Congress. It should also be noted that, both in the case just considered[1] and in the later case of the Central Pacific Railroad Company *v.* California,[2] it is explicitly recognized that a railroad company having federal franchises is an agent of the federal government. And, as the commerce power is cited as the chief authorization for such a grant, it is evident that the term "agent" may include a corporation erected for the sake of the facilitation and regulation of interstate commerce.[3]

Before summarizing and applying the conclusions thus far reached regarding the federal power of establishing corporations, it is well to allude briefly to the views of the Supreme Court as to the effect upon constitutional interpretation of changing industrial and commercial conditions. In the case of *In re* Debs,[4] the court points out that the "basis upon which rests its [*i. e.* the federal government's] jurisdiction over artificial highways is the same as that which supports it over the natural highways," notwithstanding the fact that this jurisdiction had previously been exercised almost exclusively over the latter. The court says:

[1] *Ibid.* p. 40.

[2] 162 U. S. 91, at pp. 124, 125.

[3] Federal incorporation has also been employed in the case of a bridge company. In the case of Luxton *v.* North River Bridge Company (153 U. S. 525) the incorporation of the company and the authorization of the construction by it of a bridge across the North River between New York and New Jersey was upheld as a valid exercise of the commercial power. The court states, as resting "upon principles of constitutional law, now established beyond dispute," the proposition that Congress may create a corporation "for the purpose of promoting commerce among the states."

[4] 158 U. S. 564.

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Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding generation. The law of the common carrier is the same to-day as when transportation on land was by coach and wagon and on water by canal-boat and sailing vessel, yet in its actual operation it touches and regulates transportation by modes then unknown, the railroad train and the steamship. Just so is it with the grant to the national government of power over interstate commerce. The Constitution has not changed. The power is the same. But it operates to-day upon modes of interstate commerce unknown to the fathers and it will operate with equal force upon any new modes of such commerce which the future may develop.[1]

The same principle is elaborated with perhaps even greater force and clarity by Justice Moody, in his dissenting opinion in the Employers Liability cases.[2] After discussing the development of commerce, he says:

The different kinds of commerce described (foreign, Indian, interstate) have the common qualities that they are more extensive than the jurisdiction of a single state and liable to injury from conflicting state laws and thereby are all distinguished from the purely internal commerce of the states . . . . It was not reasonably to be expected that a phenomenon so contrary to the experience of mankind, so vast, so rapidly developing and changing, as the growth of land commerce among the states, would speedily be appreciated in all its aspects, or would at once call forth the exercise of all the unused power vested in Congress by the commerce clause of the Constitution. Such a phenomenon demands study and experience. The habit of our people, accentuated by our system of representative government, is not so much in legislation to anticipate problems as it is to deal with them after experience has shown them to exist. So Congress has exercised its power sparingly, step by step, and has acted only when experience seemed to require action.[3]

This is the method of constitutional interpretation which alone can preserve the true meaning and intent of the Consti-

[1] 158 U. S. 564, at pp. 590 *et seq.*

[2] 207 U. S. 463, at pp. 519 *et seq.* It should be noted that in this portion of his opinion Justice Moody is not dissenting from the prevailing opinion.

[3] *Ibid.* p. 523.

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tution. If it be not followed, the bankruptcy of American constitutional interpretation, as its foundations were established by Chief Justice Marshall, will in effect have arrived, and the intent of the Constitution will have been sacrificed to a narrowness of vision which cannot be dignified even by calling it a worship of the letter of the Constitution.

It is evident that what has been said applies not only to the development of new forms of commerce but also to changes which affect the distinction between interstate and intrastate commerce. Under the conditions of 1911 many matters are properly interstate which in 1789 would have been purely or principally intrastate. This development must be taken into consideration, and all commerce which is, under existing conditions, "more extensive than the jurisdiction of a single state and liable to injury from conflicting state laws" must be recognized as properly under the jurisdiction of Congress.

On the basis of the conclusions thus far attained, it is proposed to examine, first, the constitutionality of the erection of federal corporations having the power to engage in interstate commerce. The constitutionality of granting to such corporations the power to manufacture will be discussed later.

In order to show the constitutionality of the erection of federal corporations having the power to carry on any sort of interstate commerce—the particular cases of water and land transportation having already been decided affirmatively—about all that seems necessary is the restatement of the principles deduced from the cases above examined regarding the federal power of incorporation, together with a brief statement of the conditions under which alone a really effective control of interstate commerce can be established.

Those principles may be recapitulated as follows: (1) A corporation is not an independent end but simply a means of attaining an end. (2) The creation of a corporation is not a great and unusual matter, requiring special justification, but is rather an ordinary incident of the exercise of sovereignty, sovereignty being used in the sense of supreme legislative power over a given matter. (3) The government of the United States,

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having such sovereignty with regard to the matters entrusted to its care by the federal Constitution, may exercise with regard to such matters the power of erecting corporations. (4) The sole tests of the validity of such federal incorporations are that the congressional purpose must be the better exercise of power over such matters, that the acts of incorporation must have an actual relation thereto sufficiently close to indicate that such better exercise of power is the real purpose of Congress, and, finally, that the action of Congress does not conflict with any constitutional prohibition. (5) Congress has such sovereignty or "plenary power" to regulate interstate and foreign commerce; and in the exercise of this power it may accordingly erect, as in fact it has erected, corporations. (6) The validity of the erection of federal corporations being subject to no tests other than those above mentioned, and Congress being the proper judge of the degree of necessity for the erection, no special limitations, such as the existence of a strictly "political" connection between the government and the corporation erected, can be assumed as a necessary prerequisite to congressional action. It is submitted that these principles are contained in the decisions above examined.

It need then be shown merely that corporations carrying on interstate commerce have in fact a relation to the regulation of interstate commerce sufficiently close to indicate that such regulation may reasonably be regarded as the purpose of Congress in the erection of the corporations. Now if corporations may be erected, as has been affirmed in the case of railroad and bridge companies, in order to facilitate the carrying on of interstate commerce through the provision of more adequate instrumentalities thereof, why may they not be erected in order to facilitate it by providing a more efficient organization for those who carry it on—a result which incorporation indubitably accomplishes? If it be contended that there is an essential difference between bridge and railroad companies and trading companies, inasmuch as the former have a peculiarly public nature, and the latter are supposedly in less need of facilitation and control, it need only be replied that the degree of necessity is a matter for the consideration of Congress.

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Although the facilitation of interstate and foreign commerce, through the provision of a superior form of organization for the use of those engaged therein, would of itself amply justify federal incorporation, there is another and, if possible, still clearer justification. The public utility of an efficient national control over persons engaged in interstate and foreign commerce is obvious. The confusion, not to say chaos, which results from state incorporation coupled with attempted federal control, has been amply demonstrated. And no remedy save national incorporation has been discovered, nor, as may be confidently affirmed, can be discovered, which will save, for the benefit of the people of the United States, the "big" corporation with its nation-wide—indeed world-wide—ramifications and at the same time subject it to an efficient governmental control. It is not necessary to discuss alternative plans; since, even admitting that any of them might prove satisfactory, Congress is recognized to possess the right to a choice of means.

Suggestions, heard in some quarters, that Congress abdicate its functions and responsibility as to interstate commerce, that the principles approved in regard to the liquor trade in the Rahrer case[1] be accepted as governing congressional action in other commercial matters and that a clear field be left to the state police power, are, aside from serious constitutional objections, chiefly interesting as illustrating the utopianism of their exponents. Few, if any, wilder ideas have ever been advanced in American politics than the notion that effective concerted action can be secured from the several states with regard to matters of this sort. Not until the American people forget the lessons of the Confederation, and of practically all their intervening history, will any such idea gain general acceptance.

From the judicial standpoint, then, it is necessary to show only that the corporate form of commercial organization is a means to the exercise of national authority over interstate and foreign commerce, and a means which bears such a relation to the subject-matter of the commerce clause that federal in-

[1] 140 U. S. 545; upholding the validity of an act of Congress providing that liquors shipped into a state should upon arrival therein become subject to the police power of the state.

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corporation of trading companies may reasonably be regarded as springing from a congressional purpose of exercising control over such commerce. And this much is abundantly evident, whether attention be directed to the facilitation of that commerce through the provision of a more efficient organization thereof, or to the fact that such incorporation also provides an agency for more efficient federal control. Either of these considerations and, *a fortiori*, both taken together afford adequate constitutional justification for federal incorporation. From the constitutional point of view the utility or non-utility of any alternate schemes for the organization and control of this commerce have absosolutely no bearing on the validity of federal incorporation.

The next question to be considered is that of the constitutionality of legislation conferring upon federal interstate commerce corporations the power to manufacture for the sake of passing the articles manufactured into interstate or foreign commerce. It is well at the outset to dispose of some very plausible but not, as it would seem, at all valid objections to the recognition of such power. These objections rest upon the well established principle that manufacturing is not *per se* commerce. It is submitted, however, that this principle does not render unconstitutional the conferring of the power to manufacture upon federal corporations engaged in interstate or foreign commerce.

The distinction between manufacturing and commerce is best developed in the case of Kidd. *v.* Pearson.[1] An Iowa statute, prohibiting the manufacture, except for specified uses, of liquor, was held not to be a violation of the federal power over interstate commerce, notwithstanding its necessary economic relation to such commerce. The court said:

> No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incident thereto constitute commerce, and the regula-

[1] 128 U. S. 1.

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tion of commerce in the constitutional sense embraces the regulation at least of such transportation. . . . If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing.

Thus interpreted, commerce would embrace "every branch of human industry"; for, asks the court:

Is there one of them that does not contemplate more or less clearly, an interstate or foreign market? Does not the wheatgrower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago?[1]

It is further pointed out that it would be impossible to regulate the details of all these productive enterprises by "uniform legislation generally applicable throughout the United States"; and it is asserted that the "local, detailed and incongruous legislation" required for successful regulation would, if enacted by Congress, be "about the widest possible departure from the declared object" of the commerce clause. Finally it is said that there would in any case remain the possibility that the producer contemplated an intrastate market; and so "interminable trouble" would be caused by attempting to draw a line between state and congressional regulation upon the basis of the "secret and changeable intentions of the producer in each and every act of production."[2]

The validity of the distinction as expressed by the court may readily be granted, as may also the correctness of the decision of the case at bar. What should be particularly noted, however, is the limited constitutional application of the distinction. As the above quotation shows, the decision rested not simply upon the distinction between manufacturing and commerce but upon the fact that there was no basis for determining whether liquors manufactured in the state were to pass in interstate and

[1] *Ibid.* p. 20.

[2] *Ibid.* p. 22.

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foreign commerce. This consideration would serve by itself to distinguish Kidd *v.* Pearson from any case which might involve the validity of legislation conferring the power of manufacturing for the sake of passing the product into interstate and foreign commerce. In such a case the intent of the producer would be determined by the power granted. *Ex hypothesi*, no authority would be given to manufacture products to be used in intrastate commerce. If a state should choose to give this additional power to a federal corporation, that would be the affair of the state itself.

That a definite federal grant of the kind under discussion and an inquiry regarding the constitutionality of such a grant would involve considerations quite other than those which determined the decision in Kidd *v.* Pearson will become evident if we consider the question from another point of view. In the case of Kidd *v.* Pearson a contrary decision would have denied to the state a power to control manufacture incidental to intrastate commerce because of the alleged effect of the prohibition upon interstate commerce. This would have been unreasonable. It would have established, in effect, the right to manufacture, for the purpose of using in intrastate commerce the articles manufactured, without the corresponding obligation of subjection to police control. But, aside from the difficulty of determining the intention of the producer, it may reasonably be asserted that the fact that manufacturing is not *per se* commerce apparently gives to the state, in the absence of federal legislation based on the relation between manufacturing and commerce, a plenary police power over manufacturing, whatever may be the intent of the producer as to the disposition of his product.

The case of the United States *v.* E. C. Knight Company[1] adds nothing in principal to that of Kidd *v.* Pearson. In the Knight case the principles of the distinction between manufacturing and commerce are elaborated upon the same basis as in the case of Kidd *v.* Pearson, which is cited at some length, and the conclusion is reached that a monopoly of manufacture is not *per se* a monopoly of commerce. The chief distinguishing

[1] 156 U. S. 1.

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feature in the Knight case is that the law under consideration was a federal law. But the application of the Knight case is very limited, since the decision rested, in large part at least, on the fact that the pleadings failed to show that the monopoly in manufacture had as its purpose or necessary result a monopoly of interstate commerce. It is accordingly not possible to say that, had the pleadings shown this, the monopoly of manufacturing would not have been held to work a restraint of trade in violation of the Sherman Act.

There is, indeed, an important series of more recent cases which support the position that, if a scheme of action, when taken as a whole, is predominantly directed toward interstate commerce, the component parts of the scheme fall under congressional control, and that manufacturing may be such a component part.

In the case of Swift and Company *v.* United States[1] the admissability of an incidental federal control over intrastate commerce was at issue. The court treats the matter as follows:

> Although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote or merely probable. On the allegations of the bill, the latter commerce no less, perhaps even more, than commerce within a single state is an object of attack. . . . Moreover it is a direct object, it is that for the sake of which the several specific acts and courses of conduct are done and adopted. Therefore the case is not like *U. S. v. E. C. Knight Co.*, 156 U. S. 1, where the subject matter of the combination was manufacture and the direct object monopoly of manufacture within a state. However likely monopoly of commerce among the states in the articles manufactured was to follow from the agreement, it was not a necessary consequence nor a primary end. . . . The two cases are near to each other . . . but the line between them is distinct.[2]

The case of Montague *v.* Lowry[3] goes a step further than the Swift case; for the combination under consideration was a combination between dealers and manufacturers, and not between dealers alone. The court held that

[1] 196 U. S. 375. [2] *Ibid.* p. 396. [3] 193 U. S. 38.

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the whole thing is so bound together that when looked at as a whole the sale of unset tiles ceases to be a mere transaction in the state of California, and becomes part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce.[1]

The same doctrine is applied in Loewe *v.* Lawler[2]—the Danbury Hatters case—and in this case the right, under certain conditions, of direct federal control over manufactures appears to be affirmed. The court indicates the nature of the case by the following quotation from the allegations:

> We repeat that the complaint averred that plaintiffs were manufacturers of hats in Danbury, Connecticut, having a factory there, and were then and there engaged in an interstate trade in some twenty states other than the state of Connecticut; that they were practically dependent upon such interstate trade to consume the product of their factory, only a small percentage of their entire output being consumed in the state of Connecticut; that at the time the alleged combination was formed they were in the process of manufacturing a large number of hats for the purpose of filling engagements then actually made with consignees and wholesale dealers in states other than Connecticut; and that, if prevented from carrying on the work of manufacturing these hats, they would be unable to complete these engagements.[3]

It is further shown how a labor combination, the members of which resided "in all the places where the wholesale dealers in hats and their customers resided and did business," sought to compel plaintiffs to unionize their factory, as part of a purpose to force "all manufacturers of fur hats in the United States" to do the same. Upon plaintiffs' refusal, a boycott was declared against them and was extended to their customers and eventually to the customers of the latter. It was not confined to the state of Connecticut but covered as well the interstate trade of the plaintiffs. Among the means of coercion to be employed was the causing, by threats and coercion "and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them," both union and non-union. The design was "thereby

[1] 193 U. S. 46. [2] 208 U. S. 274. [3] *Ibid.* p. 304.

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[to] cripple the operations of the plaintiffs' factory and prevent the plaintiffs from filling a large number of orders then on hand from such wholesale dealers in states other than Connecticut." The court regarded these averments as indicative of the existence of a direct purpose of destroying plaintiffs' interstate trade, not merely of preventing them "from manufacturing articles then and there intended for transportation beyond the state," but also preventing "the vendees from reselling the hats which they had imported from Connecticut or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connecticut to the various places of destination."[1] The court accordingly held that,

> although some of the means whereby the interstate traffic was to be destroyed were acts within a state, and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of federal authority, still . . . the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other after physical transportation ended was immaterial.

The Knight case is distinguished upon the ground that there "the object and intention of the combination determined its legality."[2] This view of the Knight case, especially when coupled with the defectiveness of the pleadings therein, goes far to support the opinion expressed above regarding that case.

The Danbury Hatters case is worthy of more careful examination than can here be devoted to it. For the purposes of this article, it is sufficient to point out that the case shows conclusively that a necessary relation may exist between manufacturing and interstate trade, and that such a relation may form a legitimate basis for federal action with regard to manufacturing. To justify federal legislation conferring upon federal interstate-commerce corporations the power to manufacture articles to be passed into the channels of interstate trade, it is necessary only

[1] *Ibid.* p. 300.

[2] *Ibid.* p. 297.

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to show that the bestowal of such a power will make them more efficient organs for the working-out of the national regulation of interstate commerce. The most strictly limited interpretation which it is possible to give to the principles governing the decision in this case will afford judicial precedent for the recognition of this degree of connection between manufacturing and commerce.

Special attention should be called to a few of the facts in this case. (1) The ultimate purpose of the labor combination related to conditions of manufacturing, not to the conditions under which interstate trade, in and of itself, was to be carried on. The decision therefore establishes the principle that any substantial relation between acts and purposes on the one hand and the carrying-on of interstate commerce on the other justifies federal control with regard to such acts and purposes, and that such a relation exists where such acts and purposes affect interstate commerce only by the results which necessarily attend the carrying-out of the purposes. (2) Since the decision is based upon the purpose and effect of the scheme as a whole, and since it is held to be immaterial that some of the acts alleged were done either before or after physical transportation, it must logically follow that, given the purpose of restraining interstate trade, even if the acts done for the sake of that end had related simply to the prevention of manufacture, with the necessary result, however, of preventing shipment, all the essential elements of the scheme would have been present and the decision must have been the same. (3) Finally, the existence of orders for goods to be transshipped in interstate commerce furnishes an answer, with regard at least to federal control over acts by private parties which would prevent manufacture of goods to be used in filling such orders, to the objection largely controlling in Kidd *v.* Pearson and the Knight case, *i. e.* the uncertain intent of the producer.

The conclusions reached from the foregoing examination of the leading cases dealing with the relationship between manufacturing and interstate trade may be recapitulated as follows: (1) Manufacturing is not *per se* commerce. (2) Manufacturing may, nevertheless, be controlled by the federal government

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under the commerce power, in so far as in any given case of the exercise of such control a necessary relation between manufacturing and commerce can be shown to exist. (3) The variable and uncertain intent of the producer is a bar to federal control and a justification of state control, even though such state control may have an actual and important effect upon interstate trade. (4) Under some circumstances a necessary connection between manufacturing and interstate trade may remove this uncertainty as to the intent of the producer. Under such circumstances manufacturing, or any interference therewith, is recognized as being part of a scheme which, when taken as a whole, relates to interstate commerce and falls under the regulating authority of federal government.

If the foregoing analysis is correct, it is clear that there are no judicial precedents which can be invoked to deny to the federal government the right to confer, upon any corporations which it may erect and to which it may give the power to carry on an interstate trade, the further power to manufacture articles to be transshipped into such trade. The great bar to federal control over manufacturing—the uncertain intent of the producer as to the interstate or intrastate disposition of the articles manufactured—will clearly not exist where the power to manufacture is thus limited by the very terms in which it is bestowed. This being true, it remains only to show that the conferring of such a power to manufacture would have the effect of better fitting federal interstate-commerce corporations to fulfil the ends for which the federal government may create them. This can be done by showing the existence of a real relation between manufacturing and commerce. The Danbury Hatters case has already been considered and found to support the view that such a relation actually exists. Some further consideration will tend to put the argument beyond the possibility of reasonable question.

It should first be noted that, in order to justify the conferring of a given power upon federal corporations or licensees, the relation between manufacturing and interstate commerce need not be so close as it must be in order to justify a general federal control over the matter in question. For example,

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the relation of ordinary banking operations to the purposes for which the federal government incorporates national banks justifies the conferring upon these banks of the power to carry on all such operations. But the federal government can not control these operations as carried on by state banks. In the case of powers conferred upon federal corporations, this distinction depends largely upon the existence or the elimination of uncertainty as to the necessity of the relation between the power conferred and the legitimate ends of the federal government. It is largely a matter of making the exercise of such powers part of a scheme over which, when it is taken as a whole, the government has indubitable authority.

It is evident that the connection between manufacturing and interstate commerce is a necessary relation in the sense that the conditions under which manufacturing is carried on profoundly affect interstate commerce. Consider, in the first place, the effects of the power of the states over "foreign" corporations. It is well settled that it is wholly within the discretion of a state to admit or exclude a corporation created by another state. Subject to the federal guaranty of the obligation of contracts and, it would seem, to the provisions of the fourteenth amendment, a state has also the power to exclude such corporations after they have been admitted. In the case of the Hammond Packing Company *v.* Arkansas,[1] it was held that an allegation as to the motive for the exclusion, even though such motive may arise from acts done by the corporation outside of the jurisdiction of the state, need not be considered by the court. The court said:

> If the premise of the asserted proposition be that, even though the statute addressed itself exclusively to the doing of business within the state under the circumstances stated, it nevertheless exerted an extra-territorial power because it restrained the continuance of business within the state by a corporation which had done the designated acts outside the state, we think the proposition without merit. As the state possesses the plenary power to exclude a foreign corporation from doing business within its borders, it follows that, if the state exerted

[1] 212 U. S. 322.

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such unquestioned power from a consideration of acts done in another jurisdiction, the motive for the exertion of the lawful power did not operate to call the power into play. This being true, it follows that, as the power of the state to prevent a foreign corporation from continuing to do business is but the correlative of its authority to prevent such corporation from coming into the state, unless by the act of admission some contract right in favor of the corporation arose . . . the prohibition against continuing to do business in the state because of acts done beyond the state was none the less a valid exertion of power as to a subject within the jurisdiction of the state. . . . The power, and not the motive, is the test to be resorted to for the purpose of determining the constitutionality of the legislative action.[1]

It is evident that a state may thus interfere very radically with the operations of companies not federally incorporated. It is also clear that federal incorporation without grant of the power to manufacture would still leave corporations largely at the mercy of the states. In order to carry on manufacturing, they would require state charters or state grants of privilege; and even though the state and federal corporations were absolutely separate in organization it is clear that the state power over corporations admitted or created by its authority could be used to superadd regulations which might, in terms or in effect, control the purely trading operations of the federal corporation. Federal control over manufacturing is essential to independent and efficient federal control over purely trading operations.

This, however, is but one illustration of the legal interdependence of manufacturing and commerce. The legal relation between these matters is inevitable because of the economic relation, which is simply that of means to end. The existence and application of this relation is a commonplace in the legislative history of every commercial power. Upon it is based the almost universal system of protective tariffs. The relation also appears in the fact that one of the most important considerations regarding the advisability of various forms of labor legislation is always the probable effect upon foreign commerce, and, in state legislation, upon interstate commerce, of the in-

[1] *Ibid.* p. 342.

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creased cost of production which regularly follows every attempt to improve the position of the laborers. At a time when the United States is developing its export trade with unexampled rapidity, the necessity of subjecting the manufacture of the goods which are to pass in that trade to a federal—and exclusively federal—control is too obvious to require discussion. And the same necessity applies to the manufacture of goods which are to pass in interstate commerce. The whole business of manufacturing is carried on with a view to, and its success is dependent upon, the securing of a low production cost in order to compete successfully in the disposal of the goods produced. If legislative control over manufacturing carried on for the sake of interstate and foreign commerce be allowed to remain with the states, the development of these forms of commerce will be most seriously hampered. Not only will the development of our export trade be imperiled, but fair and equal disposition through the channels of interstate trade of articles manufactured in different states will be impossible. On the other hand, in proportion to the influence which the foregoing considerations, especially the necessity of a low production cost, exercise upon the minds of our state legislators, regulations, in the nature of labor and other legislation, which might control manufacturing in such a way as effectively to promote the public welfare, will be in a large measure defeated, because each state will be apprehensive that its manufacturers may be placed at a serious disadvantage in the disposition of the goods produced. Manufacturing and trading operations are so inextricably blended that the one can be effectively regulated only by the authority which controls the regulation of the other. If the interrelations between the two do not constitute a "necessary relation," it is difficult to conceive in what a necessary relation would consist.

It may then be said that the power of Congress to confer upon federal interstate-commerce corporations the right to manufacture goods to be passed in interstate or foreign commerce amply meets Marshall's test, as he developed it in connection with the granting to the National Bank of the power to do a private banking business. The grant of the power to manufacture is essential in order to make these corporations fit instru-

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ments for the carrying out of federal purposes relative to the regulation of interstate commerce. The purpose of Congress in granting this power would be a public purpose and would have a reasonable relation to the control of interstate and foreign commerce.

Many of the arguments advanced against the recognition of the power which is here claimed to reside in the federal government are doubtless inspired by a feeling of apprehension, evoked by the remarkable expansion of federal authority which has already been occasioned by changing industrial conditions. But, as has been pointed out above and supported by quotations from the opinions of the Supreme Court, constitutional principles must, in order to preserve their real meaning, necessarily have different applications to various concrete situations. The principles governing the problem discussed in this paper have always been the same, and no situation has ever existed in which federal interstate-commerce corporations, with the powers relative to manufacturing outlined above, could not have been constitutionally created. That under present industrial conditions such corporations would in their operations occupy a very extensive portion of the commercial and industrial field can in no wise offer a ground of legitimate argument against their constitutionality.

Before closing this part of the discussion, it may be well to revert to a point already noticed in connection with Marshall's opinion in Osborn *v.* The Bank, *viz.* the possible contention that every federal corporation must be an "agent" of the government or have a strictly "political" connection therewith. It is hoped that the considerations previously advanced made it apparent that either these relations were not at all essential or else the words "agent" and "political" must be interpreted in so broad a sense as to mean simply "having utility for a public and properly national purpose." But upon the basis of the argument as developed in the later parts of this paper, it is believed that it can be safely asserted that, granting the existence of such limitations upon the federal power of incorporation, incorporation for the purposes and with the grant of the powers above contended for could still be justified.

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If the argument be based upon the word "agency," and if agency be understood to mean the performance of a function which the government itself could constitutionally undertake, it is hard to see why the government itself could not constitutionally carry on interstate commerce and manufacture goods to be used in such commerce. If the government could do this, however undesirable such governmental action might be, it is evident that corporations erected for that purpose would necessarily be governmental agents, even in this restricted interpretation of the term. And since regulation involves a choice of means, the burden of proof is with those who would deny this power to the government.

Again, if the argument be based upon the word "political," and if a political connection be, for the purposes of argument, understood to be a connection relative to a peculiarly governmental function, where shall we draw the line which will include banking and transportation and exclude trading operations? In the present stage of industrial and commercial development, is it possible to assert that a corporation which should furnish a medium for efficient governmental control over matters the regulation of which is so essential to the general welfare would not have this peculiarly political connection with the government? These considerations are, however, introduced merely for the sake of argument. That federal incorporation is not at all subject to any such tests has, as it is hoped, been sufficiently established in the preceding discussion.

It will be impossible in the present paper to treat at all fully the powers which may be constitutionally conferred upon such federal corporations and the correlative exemptions from state control. The general principle is plain enough, and has already been developed in connection with the subject of manufacturing. Any power which will fit the corporation to perform more effectively the work for the sake of which it is created may properly be conferred, in the absence of any direct constitutional prohibition, and the exercise of such powers can not in any way be interfered with or controlled by a state. Furthermore, as an incident to the right of Congress to a choice of

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means, congressional judgment, if at all reasonable, as to the necessity of any particular power will be conclusive upon the court. These principles, it will be recalled, are elaborated in Marshall's opinions in the United States Bank cases.[1]

Exclusive jurisdiction over suits to which a federal corporation is a party may be vested in the federal courts. It was held in Osborn *v.* The Bank[2] that federal corporations may be authorized to sue in the federal courts, since every act of a federal corporation grows out of a law of the United States. The Pacific Removal cases[3] held that it may be provided that a federal corporation shall be sued in the federal courts, and, accordingly, that such a corporation may—the privilege being deducible from its charter—cause any suit against it to be removed into the federal courts. It follows that the federal courts may be made the sole tribunals for the decision of cases relative to federal corporations, and the fact that various matters not dependent upon the construction of federal law may be involved is immaterial.

A few illustrations of the extent of the powers and exemptions from state control which may be granted to federal corporations may be useful. The case of Easton *v.* Iowa[4] is particularly instructive. It was held in this case that a state statute designed to prevent fraud can not apply to a national bank. And it should be remembered that this power of legislation for the prevention of fraud is one of the most far-reaching of state powers. The following quotation shows very clearly the viewpoint of the court:

> Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control their operations . . .; that it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government.[5]

These principles apply with equal force to the powers granted

[1] *Cf. supra.* pp. 65–72. [2] 9 Wheaton, 738. [3] 115 U. S. 1.

[4] 188 U. S. 220. [5] *Ibid.* p. 238.

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to any federal corporation or bestowed upon any individual by the federal government in the exercise of its constitutional authority.

Citations regarding the exemption of federal corporations from state control might be multiplied indefinitely. Marshall sets forth the principle very clearly in the case of Weston *v.* Charlestown.[1] Two quotations from that opinion will reveal its force.

> The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but not to those means which are employed by Congress to carry into execution powers conferred upon that body by the people of the United States. . . . The states have no power by taxation or otherwise to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.[2]

The same principles are set forth in Davis *v.* Elmira Savings Bank,[3] where a New York statute regarding the distribution of the assets of insolvent banks conflicted with congressional legislation regarding national banks. The court said:

> National banks are instrumentalities of the federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the federal government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

Cases regarding the acts of officers of the United States done in the performance of their duties are in point, since their exemption from state control rests upon the same principle.

[1] 2 Peters, 449.

[2] *Ibid.* p. 466. Marshall is quoting from his opinion in McCulloch *v.* Maryland.

[3] 161 U. S. 275.

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Among these cases may be cited Tarble's case,[1] Tennessee *v.* Davis,[2] *In re* Neagle[3] and *Ex parte* Siebold.[4] Although there may be a certain distinction between the acts of federal officers and federal cerporations—a distinction which would apparently find application with regard to the granting of writs of *habeas corpus*—the principle of the supremacy of federal law is the same in both classes of cases.

That the federal government may determine private-legal relations with regard to matters within its jurisdiction is also illustrated by the case of Lord *v.* Steamship Company.[5] This decision, based upon the commerce power, upholds a federal law limiting the liability of carriers by water. The carriage in question was upon the high seas but entirely between ports and places in the same state.[6]

The case of Ohio *v.* Thomas[7] is particularly instructive by reason of the apparent unessentiality of the matter over which federal control was none the less affirmed. The governor of a soldiers home, located in Ohio and upon land subject to the jurisdiction of that state, had supplied oleomargarine to the inmates and had been arrested for violation of an Ohio law. The court found that he had acted under authority of federal law; it consequently upheld the action of the circuit court in granting a writ of *habeas corpus*. The particular interest of the case lies in the claim made in behalf of the state that the acts done by the governor were properly subject to state law, in that they were "not necessary for the government and management of the home for the purpose for which it was incorporated, or authorized by any act of the United States." But the court held that the act was done under authority of the United States and was "therefore legal, any act of the state to the contrary notwithstanding." It would appear, accordingly, that whatever is done in accordance with United States authority will, to an extremely wide extent, be accepted by the court as being necessary to the carrying-out of the purpose of federal incorporation. The giving-out of oleomargarine as a ration can hardly be regarded as a

[1] 13 Wallace, 397. [2] 100 U. S. 257. [3] 135 U. S. 1.
[4] 100 U. S. 371. [5] 102 U. S. 541.
[6] *Cf.* also Employers Liability cases, 207 U. S. 463. [7] 173 U. S. 276.

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matter of very pressing necessity. It must then follow that the inherent importance of any particular action is immaterial; that any and every detail of the management of a federal corporation may be regulated by the federal government, and this to the exclusion of state control.

It is therefore needless to go into details as to powers which may be conferred and as to correlative exemptions from state authority.[1] Aside from any direct constitutional prohibitions, the discretion of Congress is limited solely by the necessity of some reasonable relation between the powers conferred and the better fitting of the corporation for carrying out the public purposes for which it is established. Just as Congress, to recur to Hamilton's illustration, could not erect a corporation for superintending the police of Philadelphia, so it could not confer that power upon a corporation previously erected for a proper purpose. The reason for this is not that the power conferred must be such as would justify the erection of a corporation for the sake of that function taken by itself, but rather that the superintendence of the Philadelphia police is not a proper purpose of congressional action.

This limitation, however, must be rather narrowly construed. It has been shown above that things ordinarily outside federal jurisdiction may be included among the powers granted to federal corporations or conferred as part of a licensing system upon individuals. It has also been shown why and to what extent this is true: it is true in so far as such matters form constituent parts of a scheme which, taken as a whole, is subject to federal authority. Among the powers which may be conferred upon federal interstate-commerce corporations it is probably safe to include that of doing an intrastate business, to the extent to which such intrastate business forms a necessary part of the interstate business. This relation certainly exists in the case of local telegraph business.[2] It may also be well to note particularly that the

[1] An interesting statement of what the court conceives that Congress may do with propriety in the case of national banks is to be found in Cook County National Bank *v.* United States, 107 U. S. 445. But Congress has never in the organization of these banks occupied the full field belonging to it.

[2] *Cf.* Western Union Telegraph Co. *v.* Kansas, 216 U. S. 1, 37.

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relations between employer and employee would be subject to exclusive federal jurisdiction.

It is not necessary to discuss in any detail the cases in which state laws have been held to apply to national banks, since such cases always rest either upon express permission of Congress or else upon failure of Congress to cover the subject-matter either directly or by implication. In Bank *v.* Commonwealth[1] there is to be found what is perhaps the strongest statement by the Supreme Court of the authority of the states. The decision rests in effect upon congressional permission; but the opinion contains statements which are somewhat ambiguous. It may be well to quote:

> The agencies of the federal government are only exempted from state legislation, so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle, founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states. The salary of a federal officer may not be taxed; he may be exempted from any personal service which interferes with the discharge of his official duties, because these exemptions are essential to enable him to perform those duties. But he is subject to all the laws of the state which affect his family or social relations, or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.[2]

The above quotation contains suggestive and valuable examples of matters which may be regulated by state laws in the absence of congressional action. The decision was hardly intended to go—and it certainly would not be a proper interpretation of the Constitution if it actually went—further than this. The very

[1] 9 Wallace, 353. [2] *Ibid.* p. 362.

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nature of the points referred to demonstrates this conclusively. For instance, it would be altogether absurd to contend that the utility of a national bank as a federal instrumentality might not be easily impaired if the right of the bank to collect its debts could not be constitutionally provided for and controlled by the federal government. Again, the comparison with federal officers is not completely in point, since a federal officer has a dual character, one official, one private. The bank, on the other hand, since it neither exists by the authority nor is introduced by the permission of the state, may, if Congress so determines, be subjected to federal control as to its every act, as exclusively as if it were not physically situated within the state.

The last question which remains to be discussed is that of the right of the federal government to restrict the conduct of interstate commerce under the corporate form of organization to corporations either of its own creation or else admitted by it to such commerce. It must be held that the federal government has this right, It is well settled that the power of the federal government over interstate commerce is plenary, and thus inclusive of the right to exclude from such commerce, provided always that the exclusion is not arbitrary. The matter was discussed at length in the Lottery case,[1] and it was expressly held that such a power of exclusion existed and was limited only by direct constitutional prohibitions or by the constitutional guaranties of private rights. The state power of excluding foreign corporations has been noticed above. To say nothing of the clause as to the impairment of the obligation of contracts, the guaranties of the fourteenth amendment limit the states as closely as those of the fifth amendment limit the federal government. Further argument does not seem to be required.

The further problem of the effect upon property rights of the exclusion from interstate commerce of corporations whose participation in such commerce has been tacitly recognized by Congress can not be considered within the limits of this paper.[2] It would be most unfortunate if Congress were to be recog-

[1] 188 U. S. 321.

[2] But *cf.* The Commodities case, United States *v.* Delaware and Hudson Company, 213 U. S. 366.

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nized as having the power practically to confiscate property, and it is not believed that either Congress or a state has any such power in its dealings with corporations. Without such power, the congressional authority over new corporations and the congressional power of justifiable police control over corporations already participating in interstate commerce are amply sufficient to secure every end of a sane legislative policy.

It has already been shown that the power of granting licenses to individuals has the same extent as that of erecting corporations. It may be added that the power of excluding individual participation in interstate commerce is fundamentally the same as that of excluding corporations. There is, however, this important difference. A corporation which has not been directly or tacitly admitted to a participation in such commerce has absolutely no implied right to such admission. An individual always has this right, subject to a reasonable police control. This control must be in the interest of the public welfare and must have a reasonable relation to the good conduct of interstate commerce. Its general scope is the same as that of the control over corporations already admitted to interstate commerce. Its exact delimitation would require a discussion far too extended to be included in the present paper; but the general principle is sufficiently clear.

The conclusions of this paper may be summed up in a sentence: Congress has full constitutional power to create a system of interstate commerce under complete federal control, to include within that system the manufacture or other production of goods to be passed in such commerce, and to protect this system, in all its details, from any species of state interference. Thus baldly stated, these conclusions may appear to be somewhat radical. But it is hoped that they have been justified by the reasoning and precedents which have been advanced in their support. It is also believed that it can not be successfully disputed that such a system, so far from imperiling private rights, is absolutely necessary for their protection—a task to which the system of divided control over interstate commerce is palpably unequal.

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STOCK WATERING

STOCK watering—a much abused term—may be defined as an increase of nominal capitalization of a corporation without a commensurate additional investment of funds. The baldest and simplest form—probably the one primarily responsible for the odium attached to the term by the general public—is the outright declaration of a stock or bond dividend. In this case no new capital whatever is put into the company. The new stock or bonds are a gift to shareholders.[1] The stock dividend, as will thus be seen, fully meets the contingency of an increased, if not indeed an excessive, revenue power. It makes more generous provision for distribution of earnings in future; and in so far it saddles a heavier burden upon the patrons of the road. But it does not affect a surplus already accumulated from heavy earnings in the past. Its effect is in no sense retroactive.

Flagrant examples of such stock dividends are scattered through our history. They occur nowadays with relative infrequency among railroads; but they are still common among express companies and other quasi-public concerns. The one-hundred-per-cent dividend declared by the Adams Express company in 1898 is a case in point. In the Hepburn investigation of 1879, stock dividends by railways were prominent abuses. Sheer fraud was often practised in issuing stock for speculative purposes. Between 1868 and 1872, for example, the share capital of the Erie was increased from $17,000,000 to $78,000,000, largely for purposes of stock-market manipulation. Convertible bonds were put forth in amounts "limited only by the capacity of the printing press." For this reason, in 1869, the governing board of the New York Stock Exchange actually refused longer to permit quotation of Erie securities.[2]

[1] The stock dividend is carefully to be distinguished from stock subscriptions with "rights" to shareholders—a mode of financing to be considered later.

[2] The Windom Committee Report (1874), Poor's Manual of Railroads (1884), New York Chamber of Commerce Report (1883) and the Report of the Cullom Committee (1886) abound in data of this period.

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On March 16, 1876, an extraordinary payment was made by the St. Paul road. A fourteen-per-cent dividend on the preferred stock was declared: "Seven per cent on the net earnings of 1874 and seven per cent on the net earnings of 1875. This dividend is payable in consolidated sinking-fund bonds of the company."

A common device in the early days consisted in the payment of excessive sums to dummy construction companies, composed of directors of the railroad and their friends. The original Central Pacific Railroad, for instance, actually cost only $58,000,000; but it is a matter of record that $120,000,000 was paid to a construction company for the work. The syndicate which financed the road received $62,500,000 par value in securities as profits, a sum greater than it actually cost to build the property. The eighty-per-cent stock dividend of the New York Central in 1868; scrip dividends on the Reading during the seventies; the fifty-per-cent dividend of the Atchison in 1881; the one-hundred-per-cent stock dividends of the Louisville and Nashville in 1880, by a pen stroke adding $20,000,000 to "cost of road" upon the balance sheet; the notorious one-hundred-per-cent dividend of the Boston and Albany in 1882; and the forty-per-cent Great Northern distribution in 1898—all these, and many more, have had much to do with instilling into the public mind the belief that "stock watering" is an evil well nigh inseparable from the business of a common carrier.

A typical example of a stock dividend giving rise to much public feeling in a conservative community occurred upon the Connecticut River road in 1893. This property was leased for ninety-nine years to the Boston and Maine road on a guaranteed rental of ten-per-cent dividends. In addition, by evident prearrangement, on the day of executing the lease a dividend of fifty per cent was made to Connecticut River stockholders. This was paid by giving ten-year four-per-cent bonds to each shareholder, equal in amount to one-half the face value of his stock holdings. This obviously saddled the Boston and Maine with the heavy burden of a twelve-per-cent annual rental for the life of the lease; for of course it was bound to discharge this new funded debt at maturity. The effect upon the Con-

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necticut River road was to change a bookkeeping surplus of $1,000,000 into a substantial deficit. As was officially said in the now famous governor's message on the subject: "An issue of bonds to pay a stockholder's dividend is contrary to good practice and to sound principles of corporate financiering. It is safe to say no more unconscionable transaction has occurred in the railroad history of the state." [1]

A variation of this operation would be the issue of bonds, ostensibly for the purchase of securities of other roads and apparently secured by their deposit, but followed by a sale of these securities and the distribution of the proceeds in dividends without the retirement of the overlying funded indebtedness. That something analogous to this can in effect be done is instanced by the use of the Oregon Short Line Railway Company by the Union Pacific under the administration of the late Mr. Harriman. The net result was certainly to increase the funded debt of the Union Pacific system, without any commensurate addition to its actual assets at that time. That much of this indebtedness was subsequently converted into capital stock does not alter the essential features of the transaction.

A statement of exceptional rates of dividend paid by carriers appears for the first time in the official Statistics of Railways for 1908. The following table is taken therefrom:

NAME OF ROAD	RATE ON DIVIDEND-PAYING STOCK	
	1907	1908
Lake Shore road	11 and 12	14
Burlington road	7	14
Duluth and Iron Range road	—	120
Duluth, Messabe and Northern road	—	110
Morgan L. and T. R. R. and S. S. Co.	10	25
Southern Pacific Co.	4	13
Oregon Short Line Co.	30	110
Oregon R. R. and Navigation Co.	4	79

For these companies, the aggregate dividends paid amounted in 1907 to twenty-one per cent of their combined capital

[1] A lease in 1910 of the Northern Central to the Pennsylvania Railroad with a stock dividend of forty per cent and a cash dividend of ten per cent would appear to be a close parallel. This issue is however not yet settled.

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stocks. The percentage for 1908 equaled the extraordinary rate of thirty-six per cent. Many of these rates are of course exceptional, being probably in part stock dividends. The Oregon Short Line is the most notable instance, it being the holding company for the large investments of the Harriman lines in securities of other companies.

Be the financial contingency, not of excessive present earnings, but of an uncomfortably large surplus on hand, the stock dividend affords no relief. For the stock dividend involves no gift of cash to shareholders. What is needed, in this case, is the declaration of an extra cash dividend. This is not "stock-watering" in itself, but is apt to be a correlated event. There is no addition of new stock to be supported by future earnings. But "a plum," instead of being paid in cash, may be so given as to reduce the income of the parent company and thereby enable it less obviously to be embarrassed by riches in future. The distribution may sometimes take the form of a gift of securities in subsidiary companies. The Great Northern dividend to shareholders, in 1906, of Lake Superior ore-land certificates, worth $90 on the open market, was of this sort. It has been competently estimated that, including this gift, the entire rate of return to stockholders of the road was not less than 147 per cent within a single year. To be sure, these ore certificates were acquired through the far-sighted sagacity of a great administrator, but the effect in arousing public sentiment was very marked. Only eight years before, the same shareholders had received a fifty-per-cent dividend in stock of the Seattle and Montana, which was subsequently exchanged for Great Northern shares. And substantial "rights," incident to new calls for capital, have been liberally sprinkled over the entire history of the road. The Northern Pacific road in 1908 met a similar situation by an outright cash disbursement. A substantial extra dividend of 11.25 per cent was paid out of assets of subsidiary companies undisclosed upon the books of the parent concern. The positive embarrassment of riches of the Union Pacific Company, due to appreciation in the value of its stock holdings in other roads, has also long been a source of confident predictions of similar distributions. Whether, in view of the maze of

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interrelated securities, a legally workable plan can be devised remains to be seen.

Sometimes the double complication of an unwieldy surplus and immediately and prospectively over-heavy earnings can be overcome by a single operation. Both stock and cash dividends may be combined in some manner. A very recent instance occurred on the Delaware, Lackawanna and Western. Operating under a special charter of 1849, it was protected from harassment by subsequent state legislation as to ownership or operation of coal mines. But by this same charter it was specifically forbidden to declare stock dividends. Conservatively financed in the face of enormously increased revenues from its anthracite-coal business since 1898, it was for some years earning as high as fifty per cent on its capital stock. Since 1906 dividends were paid at the generous rate of twenty per cent—double the highest regular rate on any other railroad—but even this, combined with extensive appropriation of surplus earnings to betterments, left an unwieldy balance. The market value of the stock rose in consequence to about $650 per share. The accounted surplus rose to $18,790,000, or nearly two-thirds of the total of stock and bonds outstanding. The "commodities clause" of the Hepburn Act of 1906, in effect prohibiting all railroads engaged in interstate commerce from owning or operating coal mines, suggested a remedy for all its embarassments. On July 1, 1909, an agreement was entered into with a specially organized corporation, by which all its coal was to be sold for sixty-five per cent of the market price, the buyer to assume all transportation charges from the mine. Stockholders of the parent railroad were then offered the valuable right to subscribe to shares of the new coal company; and at the same time a cash dividend of fifty per cent was declared by the railroad, to enable them to take advantage of the offer without expense to themselves. And finally, on top of all, a clear stock dividend of fifteen per cent was also given. How this last detail was reconciled with the prohibition in its ancient charter is not clear. But the fifty-per-cent cash dividend and the new corporation coincidently capitalized with the proceeds thereof were simple enough to arrange. The net result, taking the coal

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company shares at their first quoted market prices, was a dividend equal to 187.5 per cent per share. This established a new record, even among the most prosperous of the anthracite-coal roads. Perhaps the most extraordinary feature was that all the cash requirements of the transactions were met out of the surplus profits for the year, over and above the regular twenty per cent dividend.

The preceding operation shows how easy it is to evade any simple prohibition by law of the declaration of stock dividends. Such a prohibition of the issue of paid-up stock for less than par is found in the Corporation Act of the state of New Jersey. But any company so disposed—the United Fruit Company, for example, twice in recent years—merely declares a cash dividend and coincidently offers its shareholders for subscription at par an equal amount of new stock. The letter of the law is fully complied with. A most flagrant instance of this sort among common carriers was the 300-per-cent dividend of the Wells-Fargo Express Company in 1910. This amount in cash was distributed, coupled with the right to subscribe two-thirds of it to new stock of the company. The capital stock was thus trebled; each stockholder received 300 per cent on the par value of his holdings in cash; and, in addition, could sell his right to subscribe to new shares for a substantial sum. The notorious "plums" and "melons" of the Pullman Company and even the Lackawanna bonus are entirely eclipsed by this transaction.

Consolidation of railroad properties offers abundant opportunity to increase capitalization surreptitiously. The English practice of "splitting" securities had its beginnings in merger operations. The constituent companies may be so gerrymandered that successful ones with surplus earnings may average their rate of return downward by combination with other properties less favorably situated. A weak corporation, whose stock is quoted say at $50, may be merged in a second corporation whose stock is worth $150 per share. The latter may then issue new stock of its own in exchange for the $50 stock, share for share. Such an operation as this may not only deceive the public, by establishing a fictitious capitalization par in

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excess of the worth of the investment, but it may also constitute a fraud upon the shareholders of the more prosperous company, by diluting the value of their holdings. In ordinary offerings of new shares at favored prices, as already described, the shareholder finds in the bonus or "right" which he receives compensation for the fall in the value of his shares. But in these cases of consolidation, the bonuses or rights may go to the favored holders of shares in the weaker company alone. Of course it is conceivable that enhanced value may flow to both concerns from the merger; but the indirect result may appear only gradually. The classical instance of such manipulation is the merger of the Kansas and Union Pacific roads in 1880.[1] Jay Gould first quietly picked up, at a nominal price per share, a large amount of stock of the Kansas Pacific, then just out of bankruptcy. The Union Pacific, at the time, was a prosperous company paying dividends regularly. Both roads ran due west across the plains beyond the Missouri river, the Union Pacific from Omaha and the Kansas Pacific from Kansas City. The latter, however, had at the time no important western terminus. Under threat of building his moribund road through to a point where it would be a very troublesome competitor, Gould bludgeoned the directors of the Union Pacific into an agreement to merge on equal terms. His holdings were taken over share for share by exchange for Union Pacific stock. The combined companies then continued to pay six per cent on the new total capitalization and the following year increased the rate to seven per cent. By this stroke Gould made very large profits, and the shareholders of the Union Pacific were deprived of a portion of the earnings which otherwise would have belonged to them. As for the public, it was called upon to provide sufficient earnings to pay seven per cent dividends upon Kansas Pacific shares, which, prior to the merger, had been worth almost nothing.

Recent inflations of capitalization in connection with railroad consolidation are headed by the case of the Rock Island Com-

[1] Pacific Railway Commission Report (1888); 50th Congress, 1st session, Exec. Doc. no. 51, pp. 55 *et seq.*

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pany. In 1902 this purely financial corporation bought up the old Chicago, Rock Island and Pacific Railway, capitalized at $75,000,000, and substituted therefor its own stock to the amount of $117,000,000, together with $75,000,000 of collateral trust bonds, secured by the stock of the property acquired. The entire history of the New York traction companies is studded with similar occurrences. One instance may suffice. In 1906 the Interborough–Metropolitan Company purchased $105,540,000 in securities of merged lines and issued in place thereof $138,309,000 of its own stock and $70,000,000 in bonds. The subsequent bankruptcy of this company and the loss of large sums by confiding investors are matters of recent history. It must be clear that, in both these cases, a purely fictitious capitalization was created, not corresponding in any way to the real worth of the property. Whether similar exchanges of securities, share for share, with branch-line companies absorbed by a main line, amounts virtually to stock watering or not would seem to depend entirely upon circumstances. The manipulation of branch-line finances upon the old Union Pacific road was notorious. Regarding the modes of acquisition of subsidiary companies by the Great Northern road, charges have repeatedly been made in Minnesota that each merger resulted practically in additional fictitious capitalization. Whether this is true or not would seem to be dependent largely upon whether the companies absorbed were worth the price paid for them; or, in other words, whether efficiency and earning power was promoted in a degree suitably proportioned to the enhanced capitalization.

Improper manipulation of betterment and maintenance accounts may readily lead to the augmentation of capitalization without corresponding investment of new funds. Betterments or improvements by the best of our railroads have commonly been in part paid for out of surplus income. Therein lies the great benefit of American over English practice. Dividends have been withheld, sometimes for years, in order to build up a road. But suppose so wise and conservative a policy be not adopted, and that expenditures for merely pretended betterments or for mere maintenance, which ought always to be cared

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for from current revenue, be charged not to income but to capital account. In other words, suppose new securities be issued to pay for fictitious improvements, or to pay for them in excess of their real value; or that they be issued to pay bills which ought to have been paid out of the year's earnings, merely to keep the property whole; or, even worse, that current expenses, in the form of bills payable, wages and salaries due and the like, be met by issues of interest-bearing scrip. Is it not clear that in all these cases capitalization is expanded unduly in relation to the actual investment of funds? Of course these things may be done, not openly, but in such a manner as to disguise the procedure. Floating debt, for example, may be allowed to accumulate, in order to pay current expenses, while dividends which ought to have been cut off continue to be paid; and then this floating debt may be discharged all at once by the issue of stocks or bonds. Or, as was done by the Northern Pacific in 1888 under the Villard administration just on the eve of bankruptcy, accumulated charges of improvements to income, covering a period of years, may be shifted over to capital account, and an attempt made to sell securities in order to balance the books. The history of railroad reorganization in the United States contains all too many instances of such deceptive financiering. They are usually of the nature of a fraud upon stockholders; they thrive upon the pretended need of secrecy in matters of accounting; and, from the public point of view, they invariably place an undue burden of securities upon the shoulders of the community, to be supported out of current earnings. The primary lesson to be learned, both by the public and by railroad managements, is that not all new investment of surplus earnings can properly be made the basis of increased capitalization. A certain portion of such investment is merely calculated to guarantee or preserve the continuance of the present regular earnings. To capitalize the full investment, in other words, may become a financial offence.

Practically all of the possible abuses or frauds heretofore described under the head of stock watering are found combined in a single instance in recent years—the reorganization by the late E. H. Harriman and his associates of the Chicago and Alton

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road during the eight years following 1898. The case is an illuminating one, for it shows how an unscrupulous management may, at one and the same time, enormously enrich insiders, at the expense of the investing public, and prejudice the interests of shippers, both by crippling the road physically and by creating the need of high rates for service in order to support the fraudulent capitalization. The imperative need of public supervision of the finances of common carriers can not be better demonstrated than by a plain recital of the facts in the case, based on the sworn testimony elicited by the Interstate Commerce Commission in the course of its official investigation of the matter.[1]

For many years prior to 1898, the Alton road had been very conservatively financed, in the face of a profitable and constantly expanding business. According to the books at the close of that year, the assets amounted to $39,900,000. These assets were represented by some $22,230,000 of common and preferred capital stock and about $11,000,000 of indebtedness outstanding. The balance appeared upon the books of the company as surplus. The stocks had long been in receipt of eight-per-cent dividends and commanded prices ranging from $150 to $200 per share. At this time the late E. H. Harriman and three associates formed a syndicate and bought up practically all the shares, paying top-notch prices for them. In the short space of seven years they expanded the total capitalization of the road from $33,950,000 to $114,600,000, an increase of over $80,000,000. In improvements and additions to the property out of this augmented capitalization, their own accounts showed only about $18,000,000 expended. It thus appears that securities aggregating $62,600,000 were put forth during this time without one dollar of consideration. This sum is equal to about $66,000 per mile of line owned—a figure considerably in excess of the average net capitalization of the railroads of the country.

The first step taken by the syndicate, after it had acquired practically all the capital stock of the Alton road, was to issue $40,000,000 of three-per-cent bonds. This amount, it should

[1] 12 I. C. C. Reports, no. 943. Further details and analysis are to be found in *The Journal of Accountancy*, July, 1907, especially at pp. 223 *et seq.*

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be noted in passing, was $6,000,000 more than the total capitalization at the time. It was stated that these bonds were issued in order to retire maturing obligations amounting to $8,500,000, to make improvements and additions and for other corporate purposes. These bonds were issued to stockholders, *i. e.* to the syndicate, at 65 per cent of par. The bulk of these were promptly resold to the public, including the New York Life Insurance Company, at prices ranging from 82 to 94. Had these bonds been sold directly to the public, the Alton road would have received about $8,000,000 more than it in fact received. As it was, this sum went as profits to the syndicate.

The next step in the reorganization was to declare a dividend of thirty per cent to the shareholders, *i. e.* to the syndicate. Nearly seven million dollars was thus paid by the railway company out of the proceeds of the bond issue—there being no other funds available. This cash dividend, made out of the proceeds of a bond issue, was covered up by a readjustment of the road's accounts. At the outset the existence of a large bookkeeping surplus was noted; and it was estimated that appropriations for betterment and improvement, paid out of income during many years past, together with other items of ancient history, had rendered the property worth much more than appeared upon the books. Consequently, against the increased liabilities created by the new bond issue was set off among the assets the item of $12,444,000 for "construction expenditures uncapitalized." Thus was conservative financing in the past made to enrich, not the railroad company, but the private individuals who owned its stock. And the payment of a dividend out of the proceeds of a mortgage remained undisclosed to the world at large. Other minor details of the transaction, such as the use of $8,600,000 of the proceeds of the bond issue to pay coupons then due on other obligations, and the turning of other debts of the company, which should have been paid, into an apparent asset to be capitalized, were all directed to the same end. The main result of the creation of $32,000,000 of bonded indebtedness was less than $6,000,000 in cash to be spent upon the property.

The third step taken by the members of the syndicate was to

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sell all their holdings of stock in the old Chicago and Alton Railroad to a new company, the Chicago and Alton Railway, of which they were the incorporators. For the preferred stock, which had cost less than seven million dollars, and which had received a special dividend of thirty per cent, the new company paid them $10,000,000 in cash. For their 183,224 shares of common stock of the old company, which had cost $32,000,000 and on which they had received a special dividend of about $5,500,000, they took in exchange 390,318 shares of the new railway company. Part of this was then resold by them to the Union Pacific railroad, which was absolutely controlled by Mr. Harriman; and about three-fourths of the common shares finally turned up in the treasury of the Rock Island Company. To meet its obligations to the syndicate, including the purchase of a piece of new road at an exorbitant price, the new railroad company was called upon to raise some $13,000,000 in cash. This was effected by mortgaging the shares of the old railroad company, just purchased, for $22,000,000. These new collateral trust bonds were taken by a member of the syndicate at 60, although they soon openly commanded a price of from 78 to 86. The exact amount of profit to insiders at this point was never disclosed. One detail of the new mortgage may be added. It was supposed to cover some thirty-four miles of road in process of construction; yet it subsequently developed that no funds were reserved from the proceeds for that purpose. New securities had to be issued in order to complete it.

All these operations were obscured in the published accounts of the company. The balance sheet of 1906 included the item "cost of road, *etc.*," $117,000,000. In the preceding year it had been only $66,700,000. On the liabilities side, this difference was partially evened up by an increase in "funded debt" from $27,000,000 to $72,350,000. To the uninitiated it would appear as if the proceeds of large new bond issues had been expended upon the road. Yet so completely was the treasury gutted, that the new Rock Island management, on assuming control, was compelled to issue car-trust notes in order to procure equipment indispensably needed to meet the demands of traffic.[1]

[1] For a time alternate management by the Rock Island and Union Pacific Companies was agreed upon, in view of their joint investment.

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The incentive for this capital expansion appears in the profit of $23,600,000 made by the syndicate as a result of its financiering—profit a large part of which should have accrued to the railroad company. First there was the profit on the initial sale of bonds at an absurdly low price; then a 30-per-cent extra dividend from the proceeds of a bond issue; then a sale of preferred stock at a fancy price in cash to the new railroad company. This was followed by a sale of remaining stock to the Union Pacific and Rock Island Companies at exorbitant figures; by the sale of a branch line for more than it was worth; and finally by the sale of the final large bond issue to insiders at a ridiculously low price. All this was capped by the supreme insult of a payment of over $100,000 to the main conspirator as a salary for financing the enterprise.

The only excuse offered, or palliation suggested, for these predatory transactions was that, despite the enormous increase in the total capitalization of the Alton road, the character of its securities was so readjusted that it could still be counted upon to meet its fixed charges out of earnings. Although dividends on the stock had to be discontinued and the market price of its shares shriveled to almost nothing, so low were interest rates on the new bonds, and so thoroughly concealed were the main facts until the new issues were floated, that the Alton did actually, as was alleged, get some $22,000,000 of cash for improvements and additions at an additional charge on surplus earnings of $660,000 a year; in other words at a cost of only about three per cent. The new plan substituted long-time bonds and guaranteed stock at low rates of return for common stock which formerly paid large dividends. Interest requirements did not expand in proportion to indebtedness. But how about the burden of this indebtedness when it matured? Bonds which realized to the company less than two-thirds of their face value must then be redeemed at par. And, in the second place, the control of the property was now most effectually divorced from the real ownership. For the real value was fully covered by the bonds outstanding, while responsibility to the public for the management of the road was vested in the possessors of an almost worthless stock.

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A very necessary and proper financial operation, that of raising new capital for extensions and improvements on a growing property, may be carried out by offering to shareholders a right to subscribe to this new capital on specially favorable terms. This is often denominated stock watering. It may or may not be, according to the nature of the special terms offered. If stock watering be defined as an inflation of capitalization without any commensurate investment of funds, this operation would appear to be excluded. And yet, in exceptional cases, it may in practice have much the same effect. There may, in short, be an inflation of capitalization without a corresponding increase of real investment. Just in so far as the subscription price is below such a fair market value of the new offerings as would enable them to be fully taken by others, the shareholders gain at the expense of the corporation. Its capitalization will be enlarged, in relation to the capital, more than it need be. But offerings of this sort to shareholders possess several collateral advantages over an appeal to the general public. Bankers' commissions on a public underwriting are saved, and whatever bonus is given goes to augment the loyalty of stockholders, who may thus the more confidently be relied upon to come forward again. Finally, offerings of new securities to shareholders on specially favorable terms may be made a means of increasing nominal capitalization and of thus making provision for more generous returns to stockholders than it would be best to advertise by an outright increase of the regular dividend. It is this last motive which sometimes lays the corporation open to the charge of stock watering. Whether this charge is deserved or not would appear to depend upon the amount of bonus conferred, which may readily range all the way from so considerable a sum as practically to constitute a stock dividend down to a "right" with no greater value than is sufficient to induce the shareholders to accept the proffered terms. It may be a voluntary offering, at such discount below the market price as to stamp the operation as a mere blind for increasing capital stock. It may be a forced offering, due to inability of the company to sell bonds publicly for the completion of improvements partially effected, or to meet some other imperative need.

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The particular mode of financing chosen to meet needs for new capital will largely depend upon whether the present shareholders can be relied upon to take up the new securities. Obviously, if the new investment is bound to yield a larger return than the current rate of interest on bonds, the shareholders may reserve the surplus earnings to themselves in either one of two ways. The corporation may borrow at the going rate by issuing bonds, which of course do not participate in present or future surplus earnings but leave that increment to be divided among shareholders; or the company may issue new capital stock for subscription among its shareholders. But unless all this new capital stock be taken by shareholders, it is better to issue bonds; for otherwise the growing earnings will have to be shared equally between the original and the eleventh-hour investors. This alternative has led to the use of a device by which shareholders who are not in a position to subscribe to new capital, may transfer their "rights" to others and still share in the benefits of the increase. This is the method of the so-called "privileged subscription."

A single illustration may serve to make the procedure clear. Suppose a corporation whose stock commands a price of $200 per share and regularly pays eight-per-cent dividends, doubles its capitalization by the issue of one new share at par ($100) for each share then held. At first sight it would appear that each shareholder would receive, for $100, a new certificate which he could at once turn about and sell for $200, that being the original market price. But obviously the increase of the share capital by 100 per cent dilutes the value of each share. One might expect that the market price would be cut in half. This will not happen, however, if the company is clearly able to continue to pay its regular dividend. The value of the total capitalization rests upon its probable income. Nevertheless, after the issue of the new shares, these and the old ones alike will probably at first sell down towards $150. At that price the original shareholder will continue to possess his one share; and in addition he will have a "right" to obtain a new share for $100 which will obviously be worth approximately $50 to anyone else. He has split his investment by allowing the immedi-

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ate value of his original share to be cut by one-quarter; and by accepting $50 for the "right" which he has sold. He would appear to be no better off than before. He would appear to have eaten a quarter of his cake. But the crumb of comfort lies in the fact that, if the company is demonstrably able to continue to pay the same regular dividend, his income is not effected; and hence the price of his original share may soon rise toward its former level. He will then have profited by an extra dividend of $50 per share, whether he himself subscribed to the new stock at par or sold that right to another person.

The foregoing example is an extreme, though by no means an impossible one. Instances could be given of rights ranging all the way up to $200 per share. In some companies, like the Illinois Central during the nineties, stockholders have received as much as four or five per cent annually from rights in addition to their regular dividends.[1] The most extraordinary case is that of the Great Northern Railway, whose stockholders' returns from subscription rights have greatly exceeded their income from the regular seven-per-cent dividends. The common mode, however, is to increase the share capital by successive steps of from ten to perhaps thirty-three and one-third per cent at a time. Thus in 1904 the Southern Pacific authorized a new issue of preferred stock at par to all common shareholders, in the proportion of one new share for each five shares owned. The market price of the stock was then about $118. If each old share had entitled its possessor to one new share at par, which would command a price of $118, the right would have been worth $18 per share. But the premium above par on one new share had to be divided among five old shares; and, moreover, this premium had to be reckoned at the price of the stock not before but after the increase in its amount. In other words, the value of the rights had to "come off" the price; just as in the preceding instance it cut the price from $200 to $150 per share. Taking out one value of the right for

[1] *Cf. Quarterly Journal of Economics*, vol. xix (February, 1905), pp. 231–269. Also *Annals American Academy of Political Science*, May, 1910.

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the drop in market value, and dividing the balance into five parts, each equal to a right, we find that the right was worth one-sixth of the premium, or $3 per share; the market price after the increase becoming $115 per share. The old shareholder could purchase something worth $115 for $100, for each five shares held; or he could sell his rights for $3 a share to any one else, who by purchasing five at $3 each, could acquire the same privilege of subscription at par. Such is the nature of the computation of values in privileged subscriptions. Other and more technical details are of special rather than of general interest. Whether the stockholder subscribe and then sell his new shares; "sell short" at once and "cover" by the new shares when issued; merely sell a portion of his present holdings and replace the old with new shares; or sell his privilege outright—these are matters of financial detail.[1]

The main questions of wider concern are whether transactions of this nature constitute stock watering or not; and what attitude public authorities ought to adopt toward them. It is clear that the "privileged subscription" must offer the new shares at less than the market price, else all incentive to subscribe will be absent. Occasionally, as in the notable Pennsylvania subscription of 1903, the market quotation may drop below the offered price, so that outside underwriting support may be needed to prevent utter failure of the transaction. This, however, rarely occurs, and—except to the corporation in need of funds—the important point is not so much the relation between the market and the subscription price, as the relation between the subscription price and par value. It is the amount of new capital acquired in proportion to the new capitalization liability created, which affects the public in future. From this viewpoint it appears indisputable that all issues of capital for less than par value paid-in are in the nature of stock watering. Thus, when the Great Northern in 1898 issued new stock of a par value of $100 to its shareholders at $60, it nearly doubled its capitalization liability in relation to its addition of

[1] The relative advantages of each are analyzed in the *Quarterly Journal of Economics*, vol. xix, pp. 235 *et seq.*

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funds. Such action also effectively distributes any existing surplus. Thus a company having a capital of $125,000,000, capitalized at only $100,000,000, has a surplus of $25,000,000. If 100,000 new shares are issued at $80 in cash, this brings up its capitalization to $110,000,000, and its actual capital to $133,000,000. Its surplus has now dropped to $23,000,000, the diminution being exactly equivalent to the discount at which the shares were put forth. If the shares of the Great Northern had been put forth at par instead of at $60, the capital requirements of the company for extension and betterment could obviously have been met by an issue of a very much smaller amount of new stock; and the public in future years would have been relieved of the necessity of providing income for the support of a capitalization never actually paid for in cash. From every point of view, accordingly, the issue of stock for less than par value is detrimental. The company whose shares have never attained the level of par, which by implication means that its income has never warranted substantial dividends, can surely derive no benefit itself from a still further enlargement of its capitalization; and the public can ill afford the chance of being some day called upon to pay rates for service which shall support the additional burden. To railroads or other corporations in this plight, only one conservative course is open. There must be rigid economy; and every penny of income above interest charges must be devoted to upbuilding the plant to such a point that additional borrowing on favorable terms will become possible. The only alternative would be to issue a small amount of preferred stock, which by reason of its preference could be successfully issued at or above par. The prohibition of issue below par has been the policy enforced by law in Massachusetts for many years. It has been adopted by a number of other states, notably New York and Wisconsin. And while, in rare and peculiar cases, it may have worked hardship and, in cases of consolidation of companies, may at times have been ineffective, it has in the main been productive of great good.[1]

[1] *Cf.* Papers and Discussions, Twenty-first Annual Meeting American Economic Association, 1909, pp. 386 and 417. Also *American Law Review*, vol. xxvi, p. 861.

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Is the issue of bonds at a discount similar in its effects to the emission of new capital stock below par? Especially in the flotation of new companies it has long been a common practice, usually enforced by circumstances. Most of our pioneer roads after 1840 were built from the proceeds of bond sales; and so speculative did these enterprises appear, that not only substantial discounts below par for the bonds but also large bonuses of stock were needed to carry the construction forward. In order to pass upon this question, it is necessary to understand the accounting practice. Suppose a company organized with $100,000,000 of bonds sold at 80, the stock, which as yet has no value, being given as a premium. Upon the books there must appear first among the liabilities $100,000,000 of indebtedness. Had the bonds been sold for par and the proceeds all been expended upon the road, this would be balanced on the assets side by a similar amount for "cost of road." But actually the road cost only $80,000,000, that being the proceeds of the bond sale. The almost universal practice has been to even up the balance sheet by an item among the assets of $20,000,000 as "discount on bonds." Perhaps the most flagrant case of such misrepresentation occurred on the old Atchison road prior to reorganization. Its books showed among assets no less than $40,000,000 as discount on bonds and allied items. As the total "cost of road" item was only $95,000,000, discount on bonds was well on toward half the entire book value of the property. It was really interest paid in advance; or rather, a substitution of low interest payments for enlarged capital obligations falling due at the end of the term. It should have been charged to income account, not reckoned as an asset in the capital account. The liability which must be met on maturity of the bonds is in no wise diminished by this accounting practice. But what can be done? This sum cannot be taken outright from the first earnings and charged to income, nor even perhaps pro-rated over the life of the bonds. Conceivably the earnings are not yet sufficient to permit such deduction. Additional bonds might be issued to place this sum in the treasury, but the difficulty is that they again swell the liabilities. Oftentimes the company may choose to cover up the item by otherwise juggling

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its statement as to cost of property. As indicative of the difficulty of regulating this matter, the divergence between the policies of state railroad commissions is significant. The Massachusetts and the New York City commissions consistently decline to permit the capitalization of bonds at a discount. The Federal Interstate Commerce Commission forbids it as a matter of accounting practice. The New York up-state commission has been more liberal. The intelligent Wisconsin commission wisely distinguishes between the issue of bonds below par, as a necessity incident to new enterprises, and their emission as a subsequent means of inflating capitalization.[1] Whenever as in the Erie bonds of 1903–05, convertible into stock after 1915 at $50 or $60 per share, bonds issued at a discount may at some time be changed into stock below par, the matter becomes most perplexing. Broadly speaking, the practice would seem to merit condemnation. It should be permitted only in exceptional cases; for it violates, in appearance at least, that equivalence of real assets and liabilities which is so much to be desired.

With privileged subscriptions to new stock at or above par, the case is quite different. No stock watering, using this phrase as above defined, would seem to be involved. Moreover, the effect of a new issue at par is to decrease the "water" in an already overcapitalized company; for it tends to equalize the investment and the nominal capitalization. Suppose a railroad to be equitably worth $90,000,000, with a share capital of $100,000,000. Each share should be worth $90. If 250,000 new shares be issued at par, the capital investment rises to $115,000,000, while the capitalization becomes $125,000,000. This would bring the value of each share to $92. Thus in an already overcapitalized concern the average investment rises with each new issue at par. If on the other hand the company were already undercapitalized, a similar issue of new stock would reduce the market value of each share. In this sense, the issue of stock at par is not stock watering at all. Yet it is a

[1] *Cf.* especially the Antigo Water Company case, Wisconsin Railroad Commission Reports, vol. iii, pp. 647 *et seq.*

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very efficient means of distributing both present surplus and future earnings, the more so in proportion as the market price of the shares rises above par. Excessively valuable rights, over and above a figure necessary to ensure the needed new capital, serve to conceal the real earning power of a system and to confuse the public mind in matters of rate regulation.

In order to avoid an undue distribution of surplus earnings by means of "privileged subscriptions" it is possible to issue new shares of capital stock at a figure above par. The premium, of course, may still be so far below the prevailing market price as to yield a profit to the participating stockholders. The success of the issue to the corporation in need of funds is thus assured. And, from the public point of view, the increase of capitalization is actually less than the accession of funds for improvement of the service. A considerable premium in the market value of shares, such as to make this an important question, has appeared only since 1900 for the larger part of the United States. But in the densely populated portions, with old established and prosperous companies, it has long been a matter of public interest. The experience of Massachusetts has been highly instructive in this regard. Its railroad commission is the oldest in the country, dating from 1869. And while in matters of rate regulation it has only advisory powers, *viz.* to investigate, report and recommend, in the sphere of regulation of capitalization its powers were long unique. The aim of Massachusetts legislation has always been to limit the issue of securities to the *bona fide* investment of capital. The issue of stock merely as a bonus to promote the sale of bonds has never been tolerated. The lines of this legislation were for the most part laid down in the early days, when financing by subscription to share capital was the rule. Most of this stock, moreover, was sold in the beginning at a fair percentage of its face value. As a result, with the demonstrated success of the enterprise, stocks have steadily risen above par, instead of merely rising toward it, as has been the case in other parts of the country, where share capital had at the outset no real worth.

At a relatively early date, the problem of dividing the premium on new shares between the stockholders and the public

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pressed for solution. The matter came to a head with the flagrant case of the Connecticut River road in 1893, already discussed,[1] since which time an indefinite policy has given way to an attempt at positive control. Inasmuch as the recent laws creating public service commissions in Wisconsin and New York seem likely to be followed by similar action both in the Federal congress and in other state legislatures, the details of this Massachusetts experience are worth description in some detail.[2]

The cardinal principle of Massachusetts legislation has been to require that no securities of public-service companies shall be issued except for cash and at not less than par value. Its success in limiting capitalization is amply evinced by the low average per mile of line which prevails. Whether, however, this legislation has not at times been so stringent as to hamper development is an open question. The wisdom of the general plan is almost universally recognized; but the practical means of attaining the desired end, without unduly hampering enterprise, have varied from time to time, The first plan, prior to 1871, was to prohibit all issues of stock except at par. This was unfair both to the corporation and to the public. It often deprived the former of whatever premium the stock would command at public sale; and it sometimes permitted distribution of an accumulated surplus by means of excessively valuable subscription rights. The second plan, in effect from 1871 to 1878, was to require that all new shares should be sold at public auction. But this violated the traditional rights of stockholders to preference in all such transactions. Moreover, it opened the way to contests for control between rival interests, which violently disturbed market prices. At this point, in 1893, came the enlightening experience with the Connecticut River road. This led to the anti-stock-watering law of 1894, prohibiting the issue of share capital at other than the market value, this value to be ascertained by the railroad commission.

[1] *Cf. supra*, pp. 99, 100.

[2] Perhaps the most illuminating comments—those of Professor Bullock—will be found in the Publications of the American Economic Association, Twenty-first Annual Meeting, 1909, 3rd series, vol. x, pp. 384–429. Conditions at an earlier time are described in Ripley, Trusts, Pools and Corporations (1909), pp. 121-148.

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The Massachusetts law of 1894 undoubtedly restrained the issue of watered stock. Under it, shares were issued in some cases at premiums as high as $90. The Boston and Maine road put forth new shares at different times at $190 and at $165 in cash. The plan worked well as long as investors were in optimistic mood. And it happened that throughout the following decade, to 1903, the trend of market prices was steadily and sometimes strikingly upward. In consequence, shareholders almost immediately realized profits from subscriptions even at these high prices. To be sure, a very difficult task was imposed upon the railroad commission—that of determining in advance what the price would be after the new issue had been made. It was largely a matter of guesswork, and instances occurred in which "rights" were transferred into losses. Moreover, as was urged by the companies affected, this process of emitting shares at various prices introduced great inequalities as between different shareholders, in respect of the rate of return upon their investment. To the stockholder who subscribed at $190 per share, dividends at the rate of eight per cent obviously yielded only about one-half the rate of return which accrued to the old subscribers at par. In the determination of the reasonableness of general rate schedules, it was held, this would greatly embarrass both the legislature and the courts. Other details of this legislation were found to work hardship in practice; such as the limitation of bonded debt to the par value of the share capital (which still left the door open to the creation of heavy current liabilities), and the prohibition of stock issues to cover promotion expenses or to provide working capital.

With the panic of 1903, the unduly drastic character of the law became plainly apparent. Funds for development could scarcely be raised at all. One important company was obliged to borrow on its short-time notes at eight per cent, because of inability to market its stock at the high premium fixed by the railroad commission. Nor could it issue bonds, because of the limitation of indebtedness to the outstanding share capital. Conceding fully the desirability of sharing between the public and the corporation the benefits of a premium upon the issue of new stock, a special commission recommended a more liberal

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policy. Limitation of the rate of return upon investment to what was practically a savings-bank rate had dried up the sources of capital for improvement. The new law of 1908 amended the system by permitting new shares to be offered for subscription at a price not less than par, to be determined by the stockholders subject to the approval of the railroad commission.[1] The control of the state is still supreme, but an opportunity is offered for such liberality on the part of corporations and their shareholders as shall insure the success of their issues. Premiums of $25 per share, carrying rights worth as high as $5, have already been allowed.

The objection to this more liberal policy is, of course, that in times of abundant prosperity stockholders may be tempted to fix prices of emission so low as practically to entail stock watering. But in such an event, public interest will plainly call for further intervention by the state. All parties now recognize, however, as a result of this varied experience, that the rights both of the public and of shareholders must be respected. Complete freedom of issue leads to inflation; too drastic restriction dries up the springs of capital, upon which the public must depend for future growth; the wise course lies intermediate between the two.

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[1] Described in *Quarterly Journal of Economics*, vol. xxii, pp. 640–645.

The liberalization of the general corporation law is discussed in *Quarterly Journal of Economics*, vol. xviii, pp. 269–280; reprinted in Ripley, Trusts, Pools and Corporations, pp. 382–392.

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THE ELECTRIC LIGHTING SYSTEM OF PARIS[1]

THE history of electric lighting in the French capital may be said to date from 1878, when a company was formed to furnish an electrical display in connection with the universal exposition of that year. This company did not, however, accomplish anything of consequence so far as the provision of street and private lighting was concerned. A few years later the electrical exposition of 1881 served to revive public interest in the new illuminant, and a commission was thereupon appointed by the prefect of the Seine to consider the feasibility of introducing electricity into the public lighting system. But this commission failed to justify its appointment; it showed little interest in the matter and accomplished nothing. Then in 1887 the destruction of the Opéra Comique by fire gave new proof of the dangers of gas and fresh impetus to the study of electricity as a substitute for gas in public places. It was found by those who looked into the matter that Paris was behind her sister capitals in Europe and very far behind the larger cities of America in the public use of electric light.

It was accordingly not until 1888 that the city government of Paris took up the whole matter earnestly and, after considera-

[1] For the study of the electric lighting situation at Paris, the leading sources of information are the following: Ville de Paris, Conseil municipal, Rapports et documents. Rapport de M. A. Lamounoux; no. 119 de 1883. *Ibid.* Rapport de M. Lyon-Allemand; no. 7 de 1888. *Ibid.* Rapport de M. Sauton; no. 87 de 1892. *Ibid.* Rapport de M. Ch. Bos; no. 101 de 1897. *Ibid.* Rapport de M. Félix Roussel; no. 48 de 1906. *Ibid.* Rapport général sur le projet de budget pour 1908 de M. André Lefèvre; no. 116 de 1907. Ville de Paris, Rapport de M. P. Lauriol sur le secteur municipal d'électricité des Halles (Paris, 1902). *Ibid.* Rapport de M. P. Lauriol sur le secteur municipal d'électricité: Fonctionnement en 1905; Historique depuis sa création (Paris, 1906). *Ibid.* Mémoire du Préfet de la Seine au Conseil Municipal (Paris, 1906). L. Garnier et P. Dauvert, Les concessions de gaz et d'électricité devant la jurisdiction administrative (Paris, 1894). Ed. Labbé, Les concessions d'éclairage à Paris et à Berlin (Paris, 1900). Ch. Marquet, Les secteurs de distribution d'électricité à Paris (Paris, 1902). G. Louis-Jaray, Le secteur municipal d'électricité à Paris: Questions pratiques de législation ouvrière et d'économie sociale (Avril, 1903). Jean LeVallois, Le régime d'électricité à Paris (Paris, 1908).

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tion, adopted the plan which, up to the year 1907, supplied the city with electric current both for illuminating and power purposes. Under this plan the city was divided into seven sections, six of which were to be assigned to six different operating companies, the seventh, the *secteur des Halles*, being reserved for exploitation by the city itself. This plan was the result of a compromise between the advocates and the opponents of municipal ownership, and it was adopted with the purpose of comparing the results of the two systems in operation. The six companies were to receive identical concessions and to enjoy the exclusive use of the public ways in their respective sections of the city for eighteen years, beginning in 1889. At the end of that period the underground conduits and wiring were to revert to the city, the generating stations remaining the property of the companies. Thus at the expiration of the concessions the city would be in a position to utilize the results of eighteen years of experience in the formulation of its further electric-lighting policy.

The concessions of 1888–89 fixed the maximum price that might be charged for current and provided also for the appointment of a technical commission to reduce prices, whenever reductions should be warranted by the progress of electrical science. The futility of such a provision, in the light of the experience with the Paris Gas Company, was pointed out at the time; but the majority in the municipal council insisted on its insertion. It was never enforced, however, and could not well have been enforced without inflicting a grave injustice upon the operating companies. Their prices were established in the first place upon a basis that afforded no more than a reasonable prospect of recovering their capital together with a fair profit by 1907; and any proposal to compel the introduction of improved machinery before the original equipment was worn out, or its value amortized, would probably have thrown an insupportable burden upon the companies, and certainly would have subjected them to heavy losses towards the end of the concessions, unless the terms of the concessions were altered. The most important consideration, from the standpoint of the city, was to ensure for itself a free hand in dealing with the situation at

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the end of the provisional concessions; and that was secured by the provision for their simultaneous termination.

The opponents of municipal ownership declared that the conditions laid down in the draft of the proposed concessions were too onerous, and that capital would not flow freely into the new industry unless the opportunity were made more attractive. At first the results of the attempts to find applicants for the six sections appeared to lend color to this criticism. Four sections were taken up promptly, but no takers were found for the Champs-Elysées and left-bank-of-the-Seine sections until several years later. During the early nineties, too, the companies complained that they could not recover their capital together with a fair profit before the expiration of their concessions, unless the conditions of operation were made less burdensome; but with the lapse of time the demand for electricity increased and these complaints became groundless. Long before the concessions ended, the companies had placed their affairs on a sound paying basis. Their prices, to be sure, were high—higher, probably, than they would have been had the companies enjoyed a longer tenure—but that was the price the city must have expected to pay when in 1888 it shifted the risk of initial experimentation in the electric-lighting industry to private enterprise.

At that time the advocates of municipal ownership had intended that the section of the general lighting system reserved for exploitation by the city should serve as a safeguard against the abuse of their privileges by the six operating companies. It was believed that the municipal undertaking would serve not only as a check upon the operations of the companies but also as a model of public business enterprise in the field of municipal monopoly. The comparison of the results of municipal operation with those of private operation was expected to shed light on the reasonableness of the charges of the companies and the efficiency of their management. The introduction of business methods of administration and accounting in the municipal undertaking was expected to demonstrate that municipalities could successfully vie with private capitalists in the efficient conduct of big commercial undertakings.

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In 1905 the comparison was made. It did not show the degree of success that had been anticipated by the advocates of municipal ownership; nor, on the other hand, did it reveal the dismal failure that had been prophesied by the opponents of that plan. The comparison showed that electric current was produced at the municipal plant at a greater cost than at the private plants, and that the business of the municipal plant had been developed with less vigor. Current was sold from the municipal plant, however, at a price below the average for the private plants. The city had entirely recovered its initial capital by 1905, and the gross profit of the two following years of operation could fairly be paid into the municipal treasury as a net return over and above interest on the original investment. The value of the plant at the expiration of the provisional operating arrangements in 1907 should also be included in the net profits of the venture. The relatively low rates charged by the city were made possible by the fact that it could borrow its capital at three per cent, whereas the companies paid four and five. The total profits earned by the companies bore a larger ratio to the capital invested than did the profit earned by the city to its capital invested, for the difference between cost and selling price was greater.

The higher cost of production at the municipal plant was explained by (*a*) the more generous treatment of its employees by the city; (*b*) the rent, which figured in the expenses of production at the municipal plant but in the capital accounts of the private plants; (*c*) the relatively small size of the municipal plant; and (*d*) its inconvenient situation under the central markets. One-third of the current produced at the municipal plant was used for the illumination of the markets. The system of rates was not the best that might have been adopted, and the fresh capital placed at the disposal of the management for extensions was insufficient to enable it to meet the entire demand for current in that section during the last years of the undertaking. The companies also suffered from an inability to secure fresh capital during the last years of their concessions. By 1907, accordingly, the supply of electricity in all sections of Paris was behind the demand.

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The leading cause of the failure of the municipal electric-lighting undertaking at Paris to become a model of public enterprise seems to have been the indifference of the majority in the municipal council. Originally, the advocates of municipal ownership had planned to endow the infant public industry with a thoroughly efficient business organization and to free it from the shackles of governmental financial procedure and accountability. These plans, however, were not carried into effect. In fact, the business was managed on the same principles as the public administration. Public-spirited municipal councilors found at hand work that was sufficient to require all their time and energies and that seemed of more immediate importance than the conduct of an electric-lighting enterprise. As the machinery for the conduct of such a business upon strictly commercial principles required to be constructed by the municipal council, the failure of the latter to act left the municipal lighting manager to worry along as best he could with the less efficient public administrative machinery.

More suitable machinery would doubtless have been created, if the plan for municipal ownership of the gas business had not been defeated by the Senate. The same bill that was intended to provide the organization for the latter undertaking contained a clause covering the electric-lighting industry. The reduction of the price of gas in January, 1903, caused the electric-lighting companies to demand compensation for the damage they expected to suffer from the increased competition of the older illuminant. At the same time the municipal authorities recognized that immediate action would have to be taken with a view to a permanent arrangement for the supply of Paris with electric light and power after the termination of the existing concessions in 1907, or the city would find itself in an awkward position at that date. The opposition to municipal ownership of gas on the part of the Senate, however, made a similar policy with regard to electricity impracticable. The final vote of the Senate against the gas bill in December, 1905, diverted all thoughts from the improvement of the organization of the management of the electrical undertaking and compelled the municipal authorities to take immediate steps to ensure the further supply of electricity in Paris by private enterprise.

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The prefect took the matter in hand and promptly advertised for plans from electrical contractors and promoters. An even dozen plans were received, providing for (*a*) a temporary supply of electricity during a transitional period, and (*b*) a permanent supply thereafter. Some of the plans contemplated the immediate replacement of the separate plants by a single large modern generating and distributing system; others, for the utilization of these plants until a permanent system could be established. Eventually, in March, 1907, after a careful consideration of all proposed plans by technical experts and due deliberation by the municipal council, the following plan was adopted.

The city abandoned the business of supplying current to private consumers from the municipal plant *Secteur des Halles*. The six existing operating companies, together with one new company, collectively agreed to furnish Paris with current until 1913. In order to overtake the existing demand, which had gone far ahead of the supply during the preceding period of uncertainty, it was stipulated that at least six hundred kilometers of conduits should be constructed according to a fixed program appended to the agreement. The management of the provisional supply was vested in the hands of a commission, composed of delegates chosen by the seven contracting companies. For the use of the conduits and appurtenances which reverted to the city in 1907, the companies agreed to pay a rental of ten per cent of the gross receipts from the sale of current, exclusive of current sold to the city, during the year 1908. For each increase of one-tenth in the gross receipts, the rate at which the rental should be assessed upon the additional sum was to be increased by two and one-half per cent, until such increase should amount to twenty-five per cent. At that point (*i. e.* when the gross receipts should have doubled) the increase of the rate of the rental was to cease. The maximum prices for current were fixed at seventy centimes per kilowatt hour for illuminating purposes, and thirty centimes for other purposes. The maximum fixed in 1888 was 1.50 francs per kilowatt hour for all purposes, but the prices actually charged in 1907 were not much above the maximum fixed by the new

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agreement. The companies were guaranteed a monopoly of the use of the public ways for distributing purposes until the end of 1913.

The provisions concerning the treatment of labor inserted in the agreement reveal a careful consideration by the municipal authorities of the interests of the electrical workmen. The companies were required to take over the regular employees of the municipal plant, and to grant to all their employees the same conditions of employment that had formerly been enjoyed by the municipal employees. The companies were also required to recognize the trade unions of electrical workmen, to receive deputations upon request and to grant leaves of absence to union workmen designated by their fellow workmen for the conduct of union business. Finally, the companies were required to make the same arrangements for the payment of old-age pensions to their employees that had been adopted for the public service by the city.

At the same time with the provisional agreement, a concession for the permanent supply of electricity at Paris was granted to the same interests. This concession is to run from 1914 to 1940. The seven companies must consolidate into a single company, to be known as the Paris Electricity Supply Company, with a capital of at least fifty million francs. This company must construct two generating plants, one situated to the southwest of Paris, the other to the north, and each of twenty-five thousand kilowatts capacity. These two plants must be ready for the generation of current on January 1, 1914. The city may require the capacity of the northern plant to be doubled, or it may provide for the transmission of the additional current from a hydro-electric plant at a distance. If the company declines to construct the latter plant, the city may do so on its own account and require the company to purchase the current at the cost of production. Under cost of production are to be included the interest and amortization of the investment. The company undertook also to provide the capital for the extension of the supply during the transitional period; for the acquisition, at a price to be assessed by the city, of so much of the plant existing at the beginning of transitional period as might be adapted to the pur-

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poses of the company; and for the extension of the supply after 1913 at an average rate of 1,700,000 francs' worth of fresh construction each year.

The entire present plant becomes the property of the city on January 1, 1914, and must be maintained in good physical condition by the company throughout the period during which it is entitled to the exclusive use of the property. In 1940, the company's right to the use of the plant terminates without compensation from the city. The latter may repurchase the company's business at any time after June 30, 1924, upon two years' notice. In case of repurchase, the city must undertake to complete the amortization of the company's capital and indebtedness, so far as incurred for expenses of construction, or to reimburse the company for so much of its expenses of construction as shall not have been recovered at the date of repurchase.

The rental to be paid by the company will be the same as that agreed upon for the transitional period. When the net profits, after deducting from the gross profits the sums necessary for the interest and amortization of the company's bonds and for the amortization of its stocks, amount to more than six per cent of the stock, the excess over six per cent shall be divided between the company and the city. Such division is to be made according to a graduated scale, by which the city will receive one-twentieth of the first one per cent of excessive net profits and one-half of all net profits in excess of ten per cent of the capital stock. The company must also pay a conduit fee of twenty francs per kilometer per year for the use of the public streets. The maximum price of current for lighting is fixed at fifty centimes per kilowatt hour, and for other uses at thirty centimes per kilowatt hour. These prices may be increased, if the municipal council imposes fresh charges of any sort upon the production of electricity, by an amount sufficient to compensate the company for the additional burden.

The agreement attempts once more the old task of providing for the reduction of the price of current in case of the invention of improved methods of production or distribution. If the company introduces a technical improvement which effects a

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reduction of the cost of production by at least one-fifth, or if the municipal supervisory commission learns of the existence of an improvement capable of effecting such a reduction, the company must reduce the maximum prices by an amount corresponding to one-half of the saving effected, or that might be effected, by the improvement.

This municipal supervisory commission will have other important powers, for the purpose of exercising a general control over the company's conduct of affairs. It will consist of six municipal councillors, nominated by the municipal council; of an undetermined number of representatives of the electrical industries, of the Chamber of Commerce, of the electricity-consumers' associations and of the prefectoral administration, designated by the prefect of the Seine; and of two representatives of the company.

The power of this commission to enforce a reduction of rates, when the prescribed conditions have been fulfilled, is ample. The procedure for determining the effect of improvements upon the cost of production is clearly indicated. Yet the student of the lighting history of Paris may be pardoned for doubting whether this attempt will prove much more successful than those that have preceded it. It is unlikely that the courts will permit the commission to enforce any order which would in effect cause a greater loss to the company by the discarding of valuable plant than would be saved by the use of the improved process or machinery. Hence it is unlikely that the commission will be able to secure the introduction of any improvements which would not be introduced by the company voluntarily in the pursuit of its own interest. The commission should, however, be able to secure for the consumers of electricity a share in the economies effected by the introduction of the more important improvements. Yet it is possible that the lawyers for the concessionaries will succeed, as they have invariably succeeded in similar instances in the past, in discovering unforeseen ways of evading the plain intent of the provisions in question.

A prominent French opponent of the policy of controlling municipal monopolies through limited contracts has remarked, perhaps in allusion to the American saying that there is no good

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Indian but a dead Indian, that there is no good public-utility franchise but an expired franchise. This cynical dictum is doubtless premature, despite the array of evidence that supports it. Yet there are important disadvantages in a limited franchise which the recent electric-lighting agreement at Paris does not even attempt to remove.

In the first place, the effect of such an agreement is to impart an artificial rigidity to prices. The present basis of charge for electric current may become obsolete long before the end of the concession, but there is no means of securing the introduction of a different basis of charge which further experience or the progress of invention may show to be more reasonable. Thus, in the gas industry, the progress of invention has introduced the use of the gas stove and the gas engine. In many places it was found reasonable to differentiate the rates according to the use to which the gas was put. This was not possible in Paris under the gas contract of 1855 and is not possible under the gas contract of 1906. A similar difficulty may arise at any time under the electricity agreement of 1907.

The definiteness of the contract, useful as this is in securing the adoption of far-sighted plans by the management in the early period of a concession, makes it difficult to depart from those plans during the later period of a concession, even when the advantages of a change of plan are very marked. During the later period of a concession, the interest of the company in the prosecution of far-sighted policies for the development of its business continually lessens, until the point is reached where nothing suits it better than industrial stagnation. Moreover, the representatives of the city, unable at the moment of making the contract to foresee and to guard against all possible contingencies in the future, are strongly tempted to give an undue importance to the needs of the moment. Thus the financial distress of the French capital has introduced into the recent gas-lighting and electric-lighting agreements a policy of fiscal exploitation which may become most disconcerting after another decade, when the desire for lower rates on the part of consumers may be much more urgent than the need of the city for an increased revenue.

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Finally, the rigidity of the contract gives the concessionaries very little latitude for the readjustment of their conduct of affairs in response to an unexpected turn in the development of the industry. The progress of the street railway and the construction of the underground railway produced a crisis in the affairs of the Paris Omnibus Company. Perhaps the invention of the motor 'bus has brought a remedy, perhaps not. The same sort of a crisis may be brought on in the electricity-supply business at any time. In meeting such contingencies, managements and municipal authorities whose hands are tied by rigid, iron-clad agreements have always been at a great disadvantage. The agreement of 1907, except for the greater ease of its termination, has not marked any improvement in these respects over its predecessors.

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AULARD'S POLITICAL HISTORY OF THE FRENCH REVOLUTION[1]

WHAT is commonly known as the French Revolution is perhaps the most difficult theme that a historian can select. One attempting to treat it encounters every obstacle and pitfall that beset the way of those that endeavor to make the present understand the past. There is much doubt as to where the Revolution began and as to when it ceased. There is a bewildering mass of sources in regard to certain matters and few or no sources for others. Every form of violent partisanship—religious, political, social and philosophical—must be constantly reckoned with. Everyone took a hand—kings foreign and domestic, courtiers, national assemblies and their innumerable committees, local revolutionary bodies, communes, deputies on mission, *emigrés*, priests juring and non-juring, clubs, orators, newspaper editors, pamphleteers—and to each of these active forces must be assigned its proper influence on the course of affairs. Finally, on no occasion in recorded history were so many changes effected or suggested in so many fields of human interest in so short a time as in France during the ten or fifteen years following the opening of the Estates General in 1789. The most radical political, social, economic, religious and educational reforms were associated with unprecedented popular excitement and disorder, with foreign and civil war, defence, aggression and diplomacy, to such a degree as to render any coherent treatment of the whole range of events practically impossible. Some writers have, like Carlyle, taught their readers frankly to exult in the boundless chaos, in "the disimprisoned anarchy bursting up from the infinite deep, raging uncontrollable, immeasurable, enveloping a world in phasis after phasis of fever-frenzy." Others have, like Taine, seen France swallowing a fatal draught, suddenly falling to the ground, foaming at the mouth, delirious and convulsed. In general it may be said that those who have attempted to deal with the Revolution as a whole have been more impressed by the disorder and the futile clamors than by the permanent achievements of the time; and yet these

[1] The French Revolution: A Political History, 1789–1804. By A. Aulard, professor of letters at the University of Paris. Translated from the French of the third edition, with preface, notes and historical summary, by Bernard Miall. New York, Charles Scribner's Sons, 1910. Four volumes: 367, 322, 392, 334 pp.

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achievements, which were many and fundamental, are what give the study of the Revolution its special value.

To many intelligent readers who have been led to regard the French Revolution and the Reign of Terror as essentially one and the same thing M. Aulard's book will come as a revelation. He makes no attempt to include in his political history descriptions of the dramatic events, often unimportant in their effects, which fill the pages of most histories of the Revolution. He assumes on the part of his readers an elementary notion of the general course of affairs, and he confines himself in his narrative to two fundamental matters: the development of democracy in France and the origin, progress and fate of the republican form of government. In his preface he says:

> I propose to show how the principles of the Declaration of Rights were put into operation, between the years 1789 and 1804, in the institutions of the period; how they were interpreted in the speeches, by the press, in the policies of the various political parties and by the manifestations of public opinion. Two of these principles, the principle of the equality of rights and that of popular sovereignty, were those most frequently invoked during the elaboration of the new state politic. They are, historically, the essential principles of the Revolution—variously conceived and differently applied as they were, according to the times. The chief object of this book is the narration of the vicissitudes which these two principles underwent.

For the military, diplomatic and financial history one must look elsewhere, as well as for accounts of the successive "days" in Paris and the atrocities in the provinces. M. Aulard's account is, as he frankly admits, limited; but the older accounts were also limited in their neglect of the important matters which he makes clear. From his standpoint, the revolutionary history falls into four epochs: 1789–1792, during which democratic and republican parties were formed under a constitutional monarchy; 1792–1795, during which a democratic republic existed; 1795–1799, the period of the bourgeois republic; and 1799–1804, that of the plebiscitary republic. It has been quite commonly assumed by those who have dealt with the Revolution that they might regard their task as completed if they brought the reader down to the establishment of the Constitution of the Year III or perhaps to that of the year VIII. M. Aulard does not leave us until the empire is established; and he thus renders possible a proper conception of the whole general movement.

The author has for many years been engaged in the study and publication of material relating to the period in question, and there is no reason to suppose that anyone in the world knows more than he about

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the sources. He has edited two great series of documents, relating to the Jacobin Club and to the Committee of Public Safety; he has conducted an important periodical devoted to the French Revolution; he has written several valuable monographs, including an elaborate account of the conditions in Paris under the Consulate; and he has been regularly giving instruction in this field at the Sorbonne. He may justly claim to be fully acquainted with his sources, for, as he says, "it is quite possible for a man in the course of twenty years to read the laws of the Revolution, the principal newspapers, correspondences, debates, speeches, election reports and the biographies of those who played a part in the political life of the time." He is, however, by no means overwhelmed by his resources, and he shows admirable judgment in the selections which he reproduces for his readers. He is always close to the sources, yet always clear and orderly.

M. Aulard's work appeared some ten years ago, and it is high time that it found its way into English. Mr. Miall has not only translated the original, as slightly revised in the third French edition, but has supplied a brief (and commonplace) preface, a useful summary of events at the opening of each volume, some biographical notes and, very rarely, a foot-note of his own. None of these would indicate that he has any special knowledge of the matters in hand. He may be forgiven for seeming to mistake Suarez for a Frenchman and for spelling his name "Suarès"; but he ought to have known that it was not the chief business of the *parlement* to register the king's edicts, and he should have ascertained how the delegates were elected in 1789 before attempting to explain the matter to M. Aulard's readers. Mr. Miall's knowledge of French and English remains to the end a mystery to one who compares his translation with the original. In the main he has reproduced, at times awkwardly, at times clearly aud even deftly, the author's meaning; and yet every now and then he make the most unexpected blunders. *Exemplaires* becomes "examples"; *affaires*, "affairs"; *pouces carrés*, "square thumbs"; *impression* (obviously in the sense of printing), "impression"; *à moi* (help!), "to me"; *nous autres*, "we others." *Scrutin* is consistently translated "scrutiny"; and he accordingly alludes to "scrutiny of presentation" and "definitive scrutiny"—phrases which might perhaps have been safely rendered by "nomination" and "election." *Droits réels* becomes "substantial rights"; *debiteur*, "debitor"; *censuel*, "manorial." Considering the general success of the translator, we can only assume that at times he permitted himself to be careless. M. Aulard says, at the opening of his third chapter:

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Nous avons vu que, dans la Déclaration des droits, discutée et votée du 20 au 26 août 1789, il y a implicitement toute la République démocratique et sociale. On se garda bien d'appliquer tous ces principes, d'en tirer toutes les conséquences.

Why should Mr. Miall chose to give us the following cumbrous version of this clear and simple passage?

We have seen that in the Declaration of Rights, debated and voted on from August 20–26, 1789, an entire republic, democratic and social, is implicitly immanent. But the men of the time were careful not to apply all its principles, were wary of consummating all its consequences.

Happily M. Aulard's style is very simple indeed; he has little need of technical terms; and consequently the translator succeeds, in spite of some heedless renderings, in presenting to the English-reading public a fairly exact and readable version of a really extraordinary historical treatise. In its original form, M. Aulard's work is in a single stout octavo volume containing some 800 compactly printed pages. It is listed at twelve francs. It appears in English in four highly convenient and well printed volumes, but at a cost—eight dollars—which will interfere with its wide circulation. It should form a part of even the most modest collection of books on the French Revolution; indeed it may be regarded as the one indispensable work in beginning such a collection.

Partisanship, or, at least, heat and rhetoric, have so constantly marred histories of the French Revolution that one constantly marvels at M. Aulard's imperturbable fairness and moderation. He seems to have no inclination to deal damnation round and quite as little to exalt Mirabeau, Danton or Carnot into heroes. This may surprise some who have formed a notion of M. Aulard's polemical powers from reading his attacks on the "*fantaisiste*" Taine. It is quite true that M. Aulard has dealt brutally and perhaps somewhat unfairly with poor Taine; but there were extenuating circumstances. Then there has been a suspicion that his connection with the municipal government of Paris would necessarily imply an undue partiality for the Paris commune in 1793. There is, however, practically no trace of polemic in the work under review, and if its author has any unreasonable devotion to the Jacobins he has completely suppressed it in his account of them. M. Aulard has always shown himself a loyal supporter of the present republic; and no one can better afford to deal fairly with the Revolution than a Frenchman who has followed with sympathy the victories of the Third Republic over the successive dangers that have threatened it during the

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forty years of its existence. A modern French republican has less reason for fearing the whole truth about the Revolution than has the royalist or clerical. He can always urge that the excesses of the Revolution were due to the perversity of those who blocked essential reforms in their own selfish interest, and who did not hesitate to plot with foreign monarchs. Moreover, as Camille Desmoulins and others pointed out at the time, the severities and disorders accompanying the establishment of the republic were as nothing compared with the violence, cruelty and perfidy to which kings and popes had been wont to resort in order to maintain their power. M. Aulard seems to write with a calm conviction that there is nothing to conceal, nothing to apologize for, nothing to defend, attack or palliate. Indeed, he refrains in general from any comments whatsoever and contents himself with presenting to his readers the evidence which enables them to follow the history of opinion and public policy in France in all its variety, with all its contradictions and bewildering mutations. This evidence is largely first-hand and takes the form of excellently selected extracts from addresses, newspapers, reports, letters, memoirs *etc.*

M. Aulard devotes his first two chapters to democratic and republican ideas before and at the outset of the Revolution. These are interesting even to one who is familiar with his main conclusions, namely, that those writers who proclaimed the "sovereignty of the people" had no notion of universal suffrage in the modern sense: "a thing so strange to the thinkers of the eighteenth century that it had not as yet even a name"—at least outside of England.

> When, therefore, we find writers stating that the people is sovereign, they mean a portion of the people, that portion which owns property and is literate—the middle class, the *bourgeoisie*. The division of the nation into two classes, the property owners and the proletariat, active and passive citizens, had already been established in theory when the Constituant established it legally.

No one dreamed of founding a republic; few had any admiration for that form of government; and even those few agreed that it was wholly impossible in a great state like France, in a process of unification. The word "republican" was popularly applied to a certain type of radical, much as the words "socialist" and "anarchist" and, formerly, "atheist" have been attached to persons who appeared to be out of sympathy with the commonly received views of politics or religion.

The way in which the universally accepted belief that France must remain monarchical was steadily undermined by the conduct of Louis

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XVI and his advisers is the main theme of the first volume. It is astonishing to note the extreme reluctance with which even radical and progressive spirits first began to entertain the idea that perhaps a republic was inevitable, in view of the king's conduct and the attitude of the foreign powers, who expressed themselves willing under certain circumstances to intervene to check reform in France. After the return from Varennes, the republican sentiments, which the king's flight had aroused, quickly and completely subsided. France was at last painfully goaded, in September, 1792, into proclaiming its first republic. Such an outcome was in no sense the aim of any party that existed in 1789 or 1790.

The first half of volume ii is taken up with a careful account of the actual establishment of the First Republic. The latter part of volume ii and the first half of volume iii contain a most interesting study of the revolutionary government during what is commonly known as the Reign of Terror. Here the writer is at his best. No one, perhaps, has given so clear and impartial an account as M. Aulard of the motives that actuated the policy of those called upon to rule France during this frightful crisis. He makes no effort to describe the campaigns and revolts, except in their immediate effects on public opinion and on the policy of the various bodies which had a part in the control of affairs. His history of the legislation relating to the constitutional and administrative organization is very complete, and he finds space for an admirable account of religious matters — the process of dechristianization (so heartily deprecated in its more extreme forms by many of the radical leaders of the time), the worship of reason, the final separation of church and state in September, 1794, and the reëstablishment later of the liberty of worship. His study of the Girondists has in it much that will seem novel to those familiar only with the earlier legends in regard to this party—legends which have proved so enduring. He treats its leading men with the same scrupulous fairness which he shows in dealing with the Mountain. His descriptions of Marat, Danton, Robespierre and the rest are wonderfully pertinent. Let us take an extract from his account of Robespierre:

> All political activity should, according to Robespierre, tend to establish the reign of virtue and confound vice. He reasoned thus: those who are mistaken are vicious, those who are virtuous are right; error is a corruption of the heart, it cannot be sincere but must always be deliberate. There can be but two parties: good citizens and bad citizens. Conclusion: all those who do not think as we do must be eliminated from the state; they are evil intentioned and unsociable people. . . . There is but one fundamental

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political truth. He who departs from it, be it ever so little, is an enemy of the people. And how is this narrow line of truth to be distinguished? It will be apparent to anyone who is right at heart. Moreover, Robespierre is quite ready to point it out to the people; one need only follow him, for he is and must be the minister and dictator of truth. . . . He assumed the appearance of never changing but changed nevertheless. A monarchist before August 10th, he was a republican after September 22nd. He followed the movements of the populace far more than he led them. For this reason he seems to us to-day an hypocritical demagogue, but also because he is always pointing to the desirable rather than to the possible. He says what ought to be done but never tells how to do it. He loved his country and humanity; he was ready to die for the people. But he adored and constantly revealed his own *ego*. His hatreds were as eternal and inexorable as those of Madame Roland. If this magnanimous woman prevented the Girondists from becoming reconciled with the Montagnards, this magnanimous man prevented the Montagnards from becoming reconciled with the Girondists.

M. Aulard pays somewhat special attention to the appearance of what he calls "*socialisme*," by which he appears to mean all suggestions for a radical readjustment of property. The "agrarian law" seems to have been the term originally applied in France to vague hints of a communistic redistribution of land. The Convention exhibited such a horror of these hints that it passed, with unanimous and enthusiastic applause, in March, 1793, a law imposing the death penalty upon anyone who should advocate the "agrarian law," or any other law subversive of landed, commercial or industrial property. Woman's suffrage was advocated now and then but excited little interest; it elicited nothing more than an occasional easy rebuttal, along what may be called the-mother-of-the-Gracchi line of argument, perfectly familiar, in a less classical form, to us to-day.

The last volume of the English edition begins with Babeuf and closes with the establishment of the Empire. It contains much that is interesting. A single passage will indicate the author's detachment in describing the rise of Bonaparte to power:

> Since it had begun to conquer, the army, like the nation, instead of defending simply, had learned to love conquest for conquest's sake; first for the sake of glory, then for the sake of booty. . . . The army hated kings and Bourbons and continued to shout "*Vive la République*," "*Vive l'égalité et la liberté*," but it no longer had the love of civil liberty at heart. Having carried out a *coup d'état* at the instance of the civil authority, of mere obscure civilians, why not bring about a *coup d'état* of its own for the benefit of its own glorious generals? "The civil leaders"—so the army argued—

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"feed us badly and clothe us badly; but the military leaders lead us to glory and gain; they love and understand us; and they have proved, moreover, by the organization of their conquests that they understand civil matters as well as military." Now it happened that the most admired of these leaders, Napoleon Bonaparte, was at the same time a great general and a great military orator, and thus he seemed to realize in himself the old ideal of the French race.

In closing his work M. Aulard expresses the belief that an impartial narration of the events of the revolutionary period leads to certain conclusions. (1) It is a mistake to believe that the French Revolution was effected by a few distinguished individuals. It was the work of the French people, not as a multitude but in effective organized groups. (2) The Revolution was only partially completed and was suspended during the rule of Napoleon; for the education of the people was the aim of the republicans, while on the contrary it was a part of Napoleon's despotism to discourage the people from learning and reasoning. (3) It is an illusion to regard the men of the First Republic as a generation of giants. They were obviously no more competent or remarkable than the generation which preceded or the one which followed. (4) The term French Revolution has constantly been used to include two quite different things:

On the one hand the principles which underlay the Revolution and the acts conformable to them; on the other hand, the period during which the Revolution was taking place and all the acts of the time, whether they were in harmony with the spirit of the Revolution or opposed to it.

M. Aulard continues—and let us permit him to develop his thought in his own words:

Cette confusion était aussi nuisible à la vérité qu'utile aux partisans de la politique rétrograde, en ce qu'elle permettait d'attribuer à la Révolution considérée comme une sorte de personne historique les actes les plus fâcheux ou même les plus contre-révolutionnaires. . . . Cette façon abusive de parler: *la Révolution a fait ou n'a pas fait telle chose*, a eu pour effet de faire voir dans la Révolution une espèce de puissance incohérente, capricieuse, violente, sanguinaire. On a essayé ainsi de discréditer les principes mêmes de la Révolution, surtout par les soins et au profit de ceux qui considèrent ces principes comme *sataniques* et qui voudraient gouverner la société par des principes opposés. D'ailleurs tous les parties politiques, dans le XIXe siècle, ont plaidé leur cause par des arguments tirés de faits quelçonques, advenus entre 1789 et 1799, et ils ont appelé ces faits, pris au hazard ou ingénieusement choisis: *la Révolution française*. Je pense que maintenant

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les termes sont éclaircis: la Révolution consiste dans la Déclaration des droits, rédigée en 1789 et complétée en 1793, et dans les tentatives faites pour réaliser cette déclaration; le contre-révolution, ce sont tentatives faites pour détourner les Francais de se conduire d'après les principes de la Déclaration des droits, c'est-à-dire d'après la raison éclairée par l'histoire.

The spirit of this passage clearly dominates and directs the whole of M. Aulard's presentation of his complicated theme, but it does not lead to any serious distortion or suppression of the essential facts that are connected with the issues to which he has chosen to confine himself. M. Aulard has been accused of being "*l'historien de la défense républicaine*;" of accepting the revolution "*en bloc*," including Robespierre, Lebon and Carrier and the last three months of the Reign of Terror; of merely reproducing the various apologies and justifications which the Jacobins offered at the time in extenuation of the atrocities for which they were responsible before God and a horror-stricken world. Only by carefully selecting just those sources that support his thesis and neglecting all those that exhibit the actual facts and conditions is he able, according to his hostile critics, to render his work a contribution to democratic propaganda; and this, they declare, is his determining motive and dearest aspiration.[1] It is certainly true that his book gives the reader a greater sympathy with certain of the revolutionary leaders than he would get from other works, but this sympathy is the result of understanding their motives and appreciating their situation. Indeed, nothing was more urgently demanded by historical students than a careful account of just what the conspicuous men of the Revolution believed themselves to be about. And this is just what M. Aulard has explained with incomparable lucidity. His point of view is one with which most of his English-speaking readers will have little tendency to quarrel, and they cannot fail to derive the greatest benefit from a careful perusal of his remarkable treatise.

JAMES HARVEY ROBINSON.

[1] Cochin, A. La Crise de l'histoire révolutionaire, Taine et M. Aulard, 1909. This is a very ingenious and instructive pamphlet, well calculated to exhibit the irreconcilable sentiments that exist in France in regard to the ever living issue of "*La Révolution*."

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REVIEWS

Zur Soziologie des Parteiwesens in der modernen Demokratie. By ROBERT MICHELS. Leipzig, Werner Klinkhardt, 1911.—401 pp.

The roaring and gnashing of teeth in the socialist menagerie caused by Bernstein's *Voraussetzungen* has fairly subsided by this time. It is not unlikely, however, that a new and even worse commotion will follow the publication by Dr. Robert Michels, himself an avowed socialist, of the volume under review. While Bernstein devoted himself chiefly to a criticism of the economic doctrines of his party, Michels has attacked in an equally severe and exhaustive fashion its organization and leadership.

The fundamental thesis of the new book is that an "iron law" of sociology leads to the formation of an oligarchy in all political parties regardless of the nature of the doctrines they profess, whether monarchic, aristocratic or democratic. To the illustration and establishment of this law a large part of the volume is devoted. Michels finds a threefold root of oligarchy in party life—the first in individual psychology, the second in the psychology of the crowd, the third in the social necessity of party organization. Under the first of these he groups the individual's consciousness of his own importance, which with opportunity develops into the natural human lust for power, and, further, such individual qualities as native tact, oratorical talent, editorial ability, special intelligence and so on. Crowd psychology is characterized chiefly by the incompetence of the masses, their dependence upon traditional methods of party government and their feeling of gratitude to leaders who have suffered for the cause. Finally, the necessity for party organization grows with every increase of numbers and extension of functions. It is physically impossible for large party groups to govern themselves directly. All parties live in a state of perpetual warfare with opposing parties and, if they are revolutionary in character, with the existing social order itself. Tactical considerations, therefore, and above all the necessity of maintaining a condition of military preparedness, strengthen the hands of the controlling clique.

Party leadership, basing itself upon these three tendencies, may at first be spontaneous and easily susceptible of changes in personnel. With enlarged numbers, however, the early loose leadership is super-

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seded by professional control. The professional leaders become bureaucratic, they are masters of routine, they are superior in education or in native ability to their predecessors. From professional leadership the step to irremovable leadership is a short one, and with stability once attained the oligarchy is fairly developed. Corresponding to Marx's principle of the concentration of capital, Michels thus presents the principle of the concentration of power in political parties. And with power once concentrated, party leadership, even that of socialistic groups, becomes cautious, conservative, intent above all to preserve its strength undiminished and, if possible, to increase it.

All party struggles therefore resolve themselves into struggles between the party oligarchy dominating the state and other equally narrow party oligarchies striving to possess themselves of sovereignty. The dominant oligarchs are sometimes thrown out of power in a body, when strong opposition culminates in revolution. More frequently, however, the dominant oligarchy slowly purges itself of its own extreme reactionaries and lets down the bars to the leaders of the opposition, who have been sobered by responsibility and, having tasted power as party leaders, are quite as determined to retain it as any of their predecessors in office. In either event, according to Michels, there is no escaping the conclusion that both in the state and in party management oligarchy is inevitable. At some future time the socialists may possibly be successful, but socialism never.

The illustrative material which Michels uses in support of his thesis is drawn largely from the history of the German Social Democratic party. To a somewhat less extent he has drawn also upon Italian and French socialist movements. Wide personal experience and observation mark this portion of the work. There may be various opinions with regard to the validity of the author's main contention, but there can be but one opinion, and that the most flattering, with regard to the keen insight, the masterly psychology with which he handles detail questions. His discussion of the fate of the literary or scientific lion who allies himself with socialism is a case in point. Other illustrations are afforded by his discussions of the practices which party leaders employ to keep themselves permanently in control of party machinery; the psychological reactions of leadership upon the leaders themselves; the motives which impel certain members of the *bourgeoisie* to go over into the socialist camp; the relation of the various learned professions to socialism; and the changes in social position which advancement in party leadership brings with it.

What may be said in mitigation of the charges brought by Michels

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against socialism as a political movement? In the first place, his forcible presentation of the oligarchical tendencies in its present management and the certainty of their continuance in the case of victory at the polls does not prevent the clear recognition on his part of the consequences of oligarchical conditions in the present ruling *bourgeois* parties. Secondly, he admits that socialist leaders, whether they work as legislators, editors or agitators, are, as a rule, overworked and underpaid. "In general, laborers are by no means gentle taskmasters." And there is a thoroughly appreciative note regarding the character and services of "Kaiser Bebel." Finally, Michels holds that the agitation and parliamentary work of socialist leaders act as a check upon the ruling parties and governments of the day and save the laboring class from the grosser forms of tyranny and exploitation.

It is extremely doubtful whether the author's "comrades" will find that the above points are made with either sufficient fervor or at sufficient length to save his book from the Index. If they do, it will argue a degree of tolerance and intellectual integrity in the party that might well be emulated elsewhere. Even from a non-socialist point of view, this side of his presentation seems inadequate. The forms of social pessimism and contempt for the psychology of the crowd, represented by Gumplowicz and LeBon respectively, are much too dominant in his thought, although it must be admitted in extenuation that this failing is very largely shared by the political scientists of Europe generally. Greater attention to the party history and party organizations of England and the United States could hardly have failed to suggest a brighter view of the benefits, spiritual as well as material, derived by the masses from active participation in politics. Surely their continued participation in ever larger numbers indicates the conviction that the struggle is worth while. No form of party leadership can "fool all the people all the time." From a purely American point of view, one may take a certain degree of partly malicious pleasure in the author's dismal but wholly sincere plaint over oligarchic influences in European party movements. Our political leaders, even our bosses, are by no means so firmly entrenched in power as those whom he describes. One may regret also the view into which he was misled by untrustworthy American socialist authorities regarding the thorough-going corruption of trade-unionism in this country; but this is a detail. In general Dr. Michels deserves the highest praise for the enormous labor, the keen insight and the frank expression which characterize his book throughout.

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La Présidence des assemblées politiques. By HENRY RIPERT. Paris, Arthur Rousseau, 1908.—xxiii, 511 pp.

Parliamentary procedure is not, as popular opinion would have it, a subject which concerns only those who are called upon to preside over divers assemblies, from debating clubs to legislatures, in which themes are discussed and resolutions or laws adopted. On the contrary, it is one of the most important branches of public law and politics, because it is in the daily operations of legislatures that we find that play of interests whose balance forms the constitution of a state. In President Lowell's paraphrase of Redlich: "The rules of a legislative body are the political manometer which measures the strain of forces in the parliamentary machine and thereby in the whole organism of the state." Until within the last decade this was the "dark continent" of politics, for students of government seemed to think their work was done when they saw the members of legislatures safely installed in their seats. Happily, however, exploration is being actively conducted. Perhaps the chief virtue of President Lowell's excellent volumes on England is the singularly clear and straightforward account of Parliament at work. Redlich's *Recht und Technik des englischen Parlamentarismus* (now done into English) and Hinds' monumental eight volumes on *Parliamentary Precedents of the House of Representatives* have done for this political Africa what Stanley and Livingstone did for the geographic. Of course the last word is not said when the rules are described, for their daily operation and the modes of pressure adopted by the interests in play must be duly observed; nevertheless the beginning is propitious, and we are so far advanced that comparative surveys may now be made with some profit.

To this work M. Ripert has made a contribution in his volume on the presiding office in modern assemblies. As might have been expected, he devotes his attention chiefly to the legislatures of France, England and the United States, dismissing the other countries with a few pages. Concerning the speakers of the House of Commons and of the House of Representatives, he has said little that is new to students already familiar with the easily accessible literature on the matter; but there is a lucidity and brevity in his account that will commend it to one seeking much knowledge at the expenditure of little effort. The pages on the presiding office in the French Senate and in the Chamber of Deputies since the foundation of the Third Republic (page 420–57) are, of course, the freshest and most interesting. Here M. Ripert shows us, with engaging directness, how the office of

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president of the Chamber has changed its character according to time and circumstance and personality; he explains what it was in the hand of Grévy, Gambetta (that master after the fashion of Mr. Cannon), Brisson, Floquet and Bourgeois; and then he sums up, in an illuminating paragraph, the reasons why Deschanel's conception of the president's office, derived from the English model, is impossible to realize "en France où les passions sont plus vives et où d'ailleurs toutes les institutions tendent à subir l'influence politique" (page 436). After this survey of French experience he takes a comparative view (page 447). The presidents of the French chambers do not, of right, have any other functions than those of representing the assembly and directing debates. They do not have the special powers which belong to the speaker of the American House of Representatives; their functions resemble rather those of the speaker of the House of Commons. Unlike the latter, however, the French presidents do not abandon their individual rights or their careers as politicians. The tradition that imposes upon them impartiality in presiding does not forbid them to engage in active partisan operations outside of the chambers. By usage they are consulted by the president of the Republic when new ministries are formed, and very often a president of one or the other chamber is called upon to assume the direction of affairs as president of the council of ministers. No very broad generalization can be drawn from the whole survey, unless it be that it would be extremely hazardous to attempt the creation of an ideal presiding office out of the experience of divers nations. Each cobbler works best on his own lasts.

CHARLES A. BEARD.

Administrative Problems of British India. By JOSEPH CHAILLEY. Translated by Sir WILLIAM MEYER, K. C. I. E. London, Macmillan and Company, 1910.—viii, 590 pp.

India: Impressions and Suggestions. By J. KEIR HARDIE, M. P. New York, B. W. Huebsch, 1909.—126 pp.

It would be difficult to find two books on the same general subject that differ more widely in origin, in purpose and in character than those under review, or that arrive at results more different. The one is written by a Frenchman, a member of the French legislature and of the Colonial School. His work, as he explains, is "the fruit of twenty years of thought and ten of actual labor." He began by reading about India, then visited India and, after a period of four years, repeated his visit, charged on this occasion with a mission to study

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British administrative methods for the benefit of French colonial administration. M. Chailley, therefore, is eminently well fitted for the task which he has undertaken. The other book is written by a prominent member of the Labor party in the British Parliament, who, during a visit to India of a few months' duration, apparently jotted down the impressions which he received as a traveler. These impressions he first set forth in a series of letters to the *Labour Leader;* and these letters form the basis of his book. M. Chailley evidently was and is in close touch with British official circles. The fact that his book has been translated by an Anglo-Indian officer and that the proofs have been read by a former member of the viceroy's council shows how intimate are his relations with Anglo-Indian officialdom. Mr. Hardie, as his book indicates, was in touch rather with the native malcontents and during his stay in India was looked at somewhat askance both by those in charge of the Indian government and by the British population in general.

The consequence is that M. Chailley, when he finds cause to criticize the English régime in India, is a somewhat gentle critic; while Mr. Hardie's blood has evidently reached the boiling point many times in consequence of his discovery of abuses, prominent among which is the treatment which he believes is accorded to the native population by their white rulers. M. Chailley, because of his general knowledge of the difficulties which always attend the government of Asiatic peoples by Europeans, and because of his special knowledge of the institutions peculiar to India, *e. g.* the caste system, and of the political and legal difficulties which these peculiar institutions create, has been inclined to give credit to the English for their really great accomplishments in India and to excuse errors in their policy and defects in their administration. Mr. Hardie, on the contrary, is apt to emphasize the mistakes rather than the achievements of Great Britain.

Mr. Hardie's remedy for the evils which he sees is the grant to the natives of steadily widening powers of government and the recognition of a practical social equality between natives and Europeans. In other words, Mr. Hardie is a firm believer in the equality and brotherhood of man, whenever and wherever man may be, and he repudiates the notion that differences in geographical situation, in historical development or in economic conditions should receive much if any consideration in determining the political position of men. Mr. Hardie's book, therefore, while giving a reasonably accurate picture of Indian conditions as seen by the ordinary tourist, cannot be said to contribute much to the settlement of the perplexing questions which at present confront the British rulers of India.

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M. Chailley, on the other hand, although he comes from a country where liberty, equality and fraternity are household words in a fuller sense than is perhaps accorded them elsewhere, attacks the Indian problem in an eminently scientific manner. Before attempting to state his conclusions or even to describe the administration of India, he devotes several very interesting chapters to the geographical, ethnological, religious, social and economic conditions of the country. Perhaps the most interesting of these chapters is that on caste, the all-pervading, mysterious and, to a European, almost incomprehensible feature of Indian life.

M. Chailley's most serious criticisms relate to the administration of justice. The love of litigation on the part of the natives, the multiplication of lawyers, the number of instances of appeal and the attempt to apply the English law of evidence to Asiatic peoples, who do not, so to speak, play the game according to its historic rules, have all contributed to produce very unfortunate results. The people regard the courts with suspicion, attributing to them many evils for which they are not responsible, and crime is increasing at an alarming rate. A perusal of M. Chailley's criticism of Indian justice can hardly fail to call to the mind of the American reader some of the prevalent criticisms of the administration of justice in the United States. Numerous appeals, a great increase in the membership of the bar and technical rules of evidence appear to have been followed by, if not to have produced, similar results. A suspicion can hardly fail to obtrude itself that the English law, notwithstanding the laudations which it receives from those who have studied it to the exclusion of other legal systems, is hardly cosmopolitan enough in character to suit any other than the peculiar local conditions in which it had its origin and has had its greatest triumphs.[1]

One of the reforms in Indian conditions that M. Chailley suggests is an improvement of the educational system. This he considers wretched, and the least satisfactory parts of it, in his opinion, are the so-called universities. He pleads for better and better paid professors, who will raise teaching and examinations to a higher level. Such a plan, he thinks, would be followed by a notable diminution in both candidates and degrees. Those who pass should be encouraged to study distinctly Indian subjects and should be disabused of the notion that university training must necessarily be followed by admission to the bar or entrance into the government service.

[1] *Cf.* Review of Lord Cromer's Ancient and Modern Imperialism, POLITICAL SCIENCE QUARTERLY, December, 1910, vol. xxv, p. 725.

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M. Chailley feels little confidence in a government of India carried on by literati "whose knowledge is of a narrow and theoretical character, who lack a past and hereditary or acquired experience." Indeed, he deplores any participation by natives in the determination of the policy of the government, unless the plan under which such participation is granted is based on undoubted loyalty, recognition of religious differences and of aristocratic traditions and adequate representation of diverse interests. He sees quite as clearly as Mr. Hardie the social gulf which separates the natives from the Europeans; but he appreciates more fully than the English writer the reasons for this cleavage. He finds them in the social customs of the natives, of which caste is the most potent, as well as in the pride or prejudices of the Europeans.

These are but a few of the matters which M. Chailley discusses. On many other points his book is equally interesting and instructive. It is a long time since any work so intelligent, so sane and so suggestive has appeared about Indian matters. It is an excellent antidote to the fervid, lurid and, if it must be said, rather unintelligent appreciation of the English occupation of India which Mr. Hardie has given us.

F. J. G.

Chinese Immigration. By MARY ROBERTS COOLIDGE. New York, Henry Holt and Company, 1909. — 531 pp.

The American people cannot view with pride the history of their dealings with backward races. For three centuries the Indian has been murdered and robbed of his heritage, and the period covered by the semblance of treaties of friendship has been really a "century of dishonor." For two and a half centuries the African was bought and sold, and for a half century he has been Ku-Kluxed, lynched and mobbed. For more than a half a century the Hawaiian has been undergoing Christianization, dispossession and decimation. The Filipino, too, has begun to feel the hug of benevolent assimilation. And now, through the patient industry of Mrs. Coolidge, we have authentic and cumulative proof that our treatment of the yellow race is on the same level with our ignominious abuse of the red, black and brown races. If the record of iniquity is to be made complete by adding minor offences, we may note the transient exploitation of European races — Irish, Italian, Slav and Jew — at the period of their first appearance in masses, without property or citizenship and, in many instances, without knowledge of the language of their exploiters.

It is well that we should have before us and should contritely ponder these tales of our inhumanity. For here we seem to be getting down

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close to some primal instincts that flout our protests of equality and brotherhoood and deride our hopes of democracy. The socialists have set up a theory of class struggle, based on the clash between different methods of grasping a share of the nation's wealth and income. But in America, at least, these economic issues appear to be shaped and dominated by more primitive and ineradicable race conflicts. Mrs. Coolidge's statistics and interviews lead her seemingly to conclude that the Chinaman never was and perhaps never could be a menace to the "Teuton-Irish" workingman. Whether this conclusion rests upon adequate knowledge of the facts becomes somewhat doubtful when one examines her preface and her notes; for in these, while gratefully acknowledging the help of business and professional men and "many nameless Chinamen," she makes no mention of assistance given by trade-unionists or labor spokesmen. The impression that she has not used these sources of information is strengthened by her expressed distrust of trade-unionists and politicians. However this may be, when we consider the notable belligerent strength and monopolistic spirit of organized labor on the Pacific coast, coupled with its notorious corrupt alliances with politicians and capitalists, as contrasted with the less aggressive but more honest trade-unionism or socialism of other parts of the world, based on clean-cut economic antagonism of employer and employee, we cannot help asking ourselves whether the situation on the Pacific slope is not a characteristic product of race conflict.

It would seem that Mrs. Coolidge has not fully analyzed the true nature of racial antagonism or inter-racial harmony. She seems to think that the white unionists should welcome the Chinamen for all the menial jobs—for the day-labor and the farm-labor jobs—since in this way the better jobs would be left in the hands of the whites and would be still better paid, and the white laborers would rise on the backs of the Chinese. This probably would be the case, just as in our southern states the white mechanic is relatively better off than his northern compeer, because he has a negro helper for unskilled and menial parts of his work. From the commercial or the professional or the housewife standpoint, this arrangement seems to be an ideal one. It enhances profits and provides leisure for the higher life of the white man and his wife. But it remains ideal only while the menial race remains menial and the superior race refrains from menial work. Mrs. Coolidge frequently expresses surprise that white workingmen would rather starve, beg, tramp or lynch than work alongside Chinamen at Chinamen's wages. This is indeed a strange, uncommercial instinct that needs investigation. Perhaps a comparative study of whites and negroes in

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the South and of Irish and Italians in the North and other similar investigations might be useful. Again, the author sees only the monopolistic spirit of Irish trade-unionism in excluding Chinamen from the better paid occupations. Here, again, a comparative study would possibly show that the spirit of American trade-unionism, passing that of other countries in its aggressiveness and exclusiveness, is an effect rather than a cause of race antipathy. Finally, the author's ideals of race harmony seem to resolve themselves into an adequate supply of mobile labor for fruit growers, ranchers, railroads, households *etc.* The reviewer is not surprised that American race problems should be fought out through civil war and other violent methods or that resort should be had to political corruption. Scientific investigation, in its most perfect and painstaking form, is as yet carefully examining the trees instead of the forest.

J. R. COMMONS.

UNIVERSITY OF WISCONSIN.

The Russian Army and the Japanese War, being historical and critical comments on the military policy and power of Russia and on the campaign in the Far East. By General KUROPATKIN. Translated by Captain A. B. LINDSAY. Edited by Major E. D. SWINTON. With maps and illustrations. New York, E. P. Dutton and Company, 1909.—Two volumes; xxxi, 309, vii, 348 pp.

These volumes are a translation of only a portion of the four volumes of the original work. They contain parts of the author's general introduction; the introduction and the conclusion of his third volume, which are here given in chapter xiii of the second volume; and the fourth volume of the original. The publication of the original was suspended in Russia, and the translator and editor of this edition believe that the "subject matter of this translation was never printed in Russia." An article based on these memoirs was published in *McClure's Magazine*. The author's accounts of "the three principal battles of the war—Liao-Yang, the Sha-Ho and Mukden"—are not to be found in the volumes under review, since they were contained in the first three volumes of the original work. We should also bear in mind that, though General Kuropatkin was minister of war from 1898 to 1904, he was not appointed commander-in-chief of the Manchurian army until February 20, 1904, and that from March 27, when he reached Liao-yang, until October 25, 1904, he was actually subordinate "to the viceroy—Admiral Alexieff — whose headquarters were at Harbin." In March, 1905, he was superseded by General Linievitch,

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though he continued "in command of the 1st army until the end of the war." It is obvious, therefore, that the material here presented is both incomplete and limited, partly because we have only a portion of General Kuropatkin's work and partly because his experience was restricted by circumstances. It should be noticed that the editor has eliminated some of the repetitions and certain passages of a purely technical or statistical character. The author himself points out that, as regards the original work, he is the sole author only of volumes three and four, the first two having been prepared by other officers under his editorial supervision.

The contents of the two volumes under review may be classified as follows: (*a*) Historcal introduction, dealing with the military problems of Russia during the last two centuries and leading up to the recent crisis (volume i, chapters i-v). (*b*) The genesis of the war with Japan, together with Kuropatkin's endeavors to prevent the war, and the Japanese military situation (volume i, chapters vi, vii, and volume ii, appendix i, in which the editor reprints from *McClure's Magazine* material which had been collected regarding the Royal Timber Company and the activities of Bezobrazoff). The documents here given are apparently those found in archives at Port Arthur and published in *Osvobojdenie* (Stuttgart), no. 75, August 10, 1905. See also Asakawa, *The Russo-Japanese Conflict*, p. 289. (*c*) The reasons for Russian reverses, together with a summary of the war and a statement, in a hundred pages drawn from volume iii of the original work, of the measures taken by Kuropatkin during his command in the East (volume i, chapter viii, and volume ii, chapters ix, x, xii, xiii and appendix ii). (*d*) Recommendations for the future improvement of the Russian military system (volume ii, chapter xiii). By reason of the limitations of a book review, the reviewer confines himself to certain of the topics dealt with in (*b*) and (*c*). It may be possible, however, to summarize certain impressions with regard to the work as a whole.

The War Office appears to have disapproved of the construction of the Trans-Siberian Railway across Manchuria; but, that line once established, Kuropatkin advocated additions to the regular forces at Harbin in order to protect it. He was, however, opposed to the annexation of southern Manchuria, and in October, 1903, he urged the speedy evacuation of Mukden. But by this time another element had been introduced, namely, the influence of Bezobrazoff, who had interested many individuals, some of royal blood, in the Ya-lu timber concession. To protect these interests, evacuation had already been delayed beyond the date set by the treaty with China. The tsar's con-

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nection with and approval of these plans is probable, though Kuropatkin frequently maintains that the tsar was opposed to war. In this portion of the work a vigorous attack is made on the activities of M. de Witte, finance minister, who had by 1903 a practically independent military department in Manchuria. But de Witte, Lamsdorff and Kuropatkin appear to have united in endeavoring to put an end to Bezobrazoff's activities in Korea; and on Alexieff is thrown the main responsibility for the continued military support given to the timber company. Finally, in November, 1903, Kuropatkin proposed the restoration of Kuan-tung, Port Arthur and Dalny, and the abandonment of the southern branch of the Eastern Chinese railway, in return for the recognition of certain rights in northern Manchuria and a compensation of £25,000,000 from China. Obviously, if the scheme had been practicable on the Chinese side, the Russian government would not then have agreed to it; and it is perhaps doubtful how far the Japanese government would have accepted such a solution. These proposals, therefore, seem to represent a last and almost desperate attempt to unload the responsibility for subsequent events upon those who rejected this solution. It may be remarked, further, that however determined Kuropatkin's opposition to war may have been, he should have been equally determined to secure adequate reforms in the War Office, to the end that, if the war was to come, adequate military forces might be available.

In the portions of the book which deal with the war, there is much detailed criticism regarding communications, mobilization, discipline, system of promotion, technical shortcomings, defects in organization and *personnel*, absence of military spirit and lack of determination. This is interwoven with a tendency to throw responsibility and blame upon subordinates. Finally, the point is strongly made, with an appeal to historical examples, that peace was made when, according to the older traditions of Russian service, a new and victorious stage of the war might have been expected. To the layman, at least, a large portion of Kuropatkin's criticisms seem to be criticisms of Kuropatkin's administration of the War Office from 1898 to 1904. In general, therefore, the book appears to be a piece of special pleading on the part of a defeated general. Certain valuable suggestions are made, however; notably as to the distinction which must be made between wars waged by armies and wars carried on by nations, such as most modern wars apparently must be. The survey of Russian military history is useful; and the author's conclusions regarding the relatively greater importance of the western as compared with the eastern frontier of the Russian empire are significant, whether we accept them or not.

ALFRED L. P. DENNIS.

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The Development of Hungarian Constitutional Liberty. By Count JULIUS ANDRÁSSY. Translated from the Hungarian by C. ARTHUR and ILONA GINEVER. London, Kegan, Paul, Trench, Trubner and Company, 1908.—465 pp.

The period covered in this book is from the ninth century to the death of Matthias II (1618). The author has made a patriotic endeavor to review Hungarian constitutional history in such fashion as to emphasize the national contributions to the history of institutions. To this end, through part of the book, a parallel survey of English constitutional development is utilized to enlighten the student of Hungarian history. But the struggle with the Turks, the foundation of Hapsburg influence, Bocskay's insurrection and the disruptive forces so strongly shown in the beginning of the seventeenth century introduce elements which carry the reader far from English history. Accordingly, in spite of the attention paid to English institutions, we must judge the book primarily as a contribution to Hungarian history. Both because of its merits and because of the small number of books in English available to the general reader or even to students, the results of the author's investigations will be welcomed.

In Hungary there was from the outset a strong national tradition. But when Hungary accepted Christianity it also inherited the influences of the great mediæval struggle between the state and the church. Hungarian nationalism had therefore to consider if the opposition to western domination were to be accompanied by a reversion to paganism. Fortunately the conflict of emperor and pope enabled Hungary to remain both independent and Christian. But, as in other parts of Europe, the increase of papal authority during the thirteenth century threatened the development of a monarchical state. The relationship of crown and nobility, as illustrated in the Golden Bull, was also a disturbing factor. The end of the Arpád line afforded, however, an opportunity for the reëstablishment of a strong state and also for a royalist reaction similar to that which took place in England under Edward I. But again the forces of disintegration began to sap royal power: disputes as to the succession ranged the greater nobility in factions. The advancing Turkish peril and the rise of John Hunyadi gave the gentry and the nation at large an opportunity to attempt with varying success a national revival; but the jealousy of the magnates and the crushing disaster at Mohács ended Hungarian unity. Civil war and Turkish intervention followed, preparing the way finally for the introduction of Hapsburg rule. And before many years Hungary was distraught by

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the struggles of the Thirty Years' War while the Turks prowled on its border.

The book contains no references and is not furnished with an index. The author repeats himself and at times becomes very tedious. He talks much of internal administration, but he fails to explain the workings of some of the local institutions on which he lays such loving hands. He indulges much in class groupings and gives many maxims of political action; but he lacks precision of statement. His criticisms are those of an affectionate apologist. His task, however, is certainly a difficult one. In conclusion it must be borne in mind that this volume is only a part of the work projected.

A. L. P. D.

Oxford Studies in Social and Legal History. Edited by PAUL VINOGRADOFF. Volume I: *English Monasteries on the Eve of the Dissolution.* By ALEXANDER SAVINE. *Patronage in the Later Empire.* By F. DE ZULUETA. Oxford, Clarendon Press, 1909.—vi, 303, 78 pp.

These two studies on subjects so widely different have at least one thing in common—that patient, long struggle with detail, that careful disentangling of intricacy and that convincing summary of evidence which mark the work of Vinogradoff. Every student of social history will echo the hope of the editor that the present volume may be but the first of many.

Professor Savine's study rests mainly upon the monastic side of the Valor Ecclesiasticus, the returns of the commissioners of 1535 appointed to inquire into the wealth and economic situation of the church in England. In his interesting indictment of our modern historians in this field, the author shows that none of them has even attempted to master this material. All of them, even in such large matters as estimating the wealth and holdings of the monasteries, have relied upon Elizabethan estimates. "Dixon, Dr. Gasquet, Mr. Archbold, Professor Kovalewsky all take their totals . . . from Speed, Dugdale and Tanner" (page 79). The reasons for this are obvious when one follows Dr. Savine through the intricacies of the returns. Even then the results are by no means final; but until such a careful analysis was made the whole basis for judgment was lacking. This analysis, while patient and careful, lacks illumination. Dr. Savine's second book is entitled "Monastic Economy." It covers in a businesslike way the details of the establishments, their incomes, their farms, their mills, the monastic population, expenses for education, for charity *etc.* If through this part one has sometimes

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the sensation of not seeing the forest for the trees, one has at the close a summary which effectually disposes of some phases of polemic history for some time to come. Referring to the work of Dr. Gasquet, who saw in the Reformation in England a rising of the rich against the poor, and in the suppression of the monasteries an economic error of the first magnitude, owing to their important position as employers of industry and as landlords, Dr. Savine points out that there were only about 7000 religious persons, and he estimates that the other persons attached to the monasteries numbered about five to one. That makes not over 35,000 mouths fed by the monasteries. But among these were many who were not paupers but well-to-do. The monasteries were not institutions of democracy. The summary with which this book closes is worth quoting:

> The monks themselves belonged to very varied social strata; and it is idle to talk of the unanimity of their views and interests. Some monks lived in abbeys like Glastonbury, which had a gross income of £3500; others in priories like Byrkley with a gross income of five pounds. The abbots of the principal monasteries sat in the House of Lords; and, as the heads of great establishments, naturally considered themselves very important personages and the superiors of their numerous servants, laborers and tenants. Even the ordinary monks of large monasteries lived in great comfort, prayed in a church both grand and beautiful, dined in a large refectory, worked in the comfortable galleries of the inner cloister, walked within the high walls of their own carefully tended gardens amidst such beauties and amenities as may still be seen in the oldest colleges of Oxford and Cambridge. The monks of the poorer provisional houses, on the other hand, had scarcely money enough to live upon, had to perform manual work and kept but few servants and laborers. Judged by the standard of income, they were on a par with the average small farmer. The friars were beggars and tramps, who could readily sympathize with the proletariat of the day. But however heterogeneous the interests of the professed "religious" might have been, the majority of them could not but sympathize with the upper and middle classes, in a way altogether at variance with anything like a democratic spirit.
>
> In a society full of discord between classes so various, the Roman Catholic Church failed to remain thoroughly and sincerely democratic, because it was, as it still is, the church of general unity. It undoubtedly expressed sympathy with the masses and the poor, but at the same time it continued to be on good terms with the few and the rich. It enjoined simplicity, poverty, privations, but at the same time it knew how to find excuses for riches and luxury. In the great drama of class warfare it was compelled to shift its fighting-place or to stand between the hostile camps. It was stronger abroad than at home. It became bold and mighty when it girded

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itself with a sword against the infidels; in the hard struggle for life among its own children it confined its energies to a policy of pious appeals to love and mercy.

The essay on *Patronage in the Later Empire* is more special in its appeal, though no student of the structure of the Roman empire and of the early middle ages should miss it. It is really a commentary on Codex Theodosianus 11, 24 and Codex Justinianus 11, 54. These titles have to do with the patronage which the powerful landlords were extending over the peasantry as against the imperial tax-gatherers. As the constitutions in Theodosius refer mostly to Egypt, Mr. De Zulueta has confined himself to the instances and evidence for that country—especially Libanius *etc.* There is again a searching examination of all recent scholarship and all known texts. The study is frankly technical and nothing else, but it casts a much needed light on the history of the colonate and the economic and social formations taking shape under the outer uniformity of the imperial administration.

Had papyri grown in Gaul we might be saved much conjecture as to the situation there, which is the subject of so much controversy.

J. T. S.

Die Plebs: Studien zur römischen Rechtsgeschichte. By Julius Binder. Leipzig, A. Deichert's Nachfolger, 1909.—630 pp.

Professor Binder's book has two quite distinct aspects. It may be considered, first, as a critical examination of all the secondary sources for the early history of Rome and, secondly, as a special plea for a fundamentally new interpretation of that history by means of a new theory of the plebs.

From the first point of view, it deserves unstinted praise. Every important theory directly or indirectly connected with the subject, from the first stirrings of critical analysis in the Renaissance to the most recent doctrine, is passed in review. Binder's work is accordingly invaluable for those who desire orientation in the subject. The author does not, as his sub-title might suggest, confine himself to the legal and political antiquities of Rome. Investigators have approached Roman history from every conceivable point of view. Among the more sharply defined specializations of research are topography, philology, etruscology, history of religion. In all of these Binder, without professing special competence outside of his own department, shows himself conversant with the literature.

Binder's statement of previous investigations is concise, and his treat-

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ment of the investigators is in the main fair. There is an unfortunate tendency to insist on the difference between Romanic and German scientific methods; and although Binder has none of the deplorable arrogance exhibited by a few Germans, to whom *deutsche Wissenschaft* is an inseparable compound, he is perhaps unduly harsh in dealing (pages 239 *et seq.*) with Fustel de Coulanges, whose *Cité antique*, however inadequate from modern viewpoints, deserves less cavalier treatment at the hands of a critic who has dealt so patiently and kindly (pages 257 *et seq.*) with Cuno's fantasies.

That the permanently interesting problem of the early history of Rome is the origin of the plebs goes without saying, and it is equally obvious that any theory of that origin is nothing more or less than a theory of Roman history. To Binder the solution of the problem lies in the thoroughgoing and all-pervading dualism that he finds in the institutions of early Rome.

He considers, first, the development of the city itself. With most topographers, he supposes an original settlement on the Palatine, Roma Quadrata. This grew into a larger community, the Septimontium, in which, with Wissowa, he counts the Subura, not as the later valley of that name, but as the earlier designation of the Caelian. On the ground of his own interpretation of the much-discussed inscription on the base of Trajan's column, he holds that Quirinal and Capitol formed a single hill, and on this hill he places a Sabine settlement, which became the Quirinal city. Between these two cities—for he makes them completely organized separate communities—lay the Forum valley with the Janus shrine and the Sacra Via. The importance of the Janus symbol in later Roman history, as evidenced by its appearance on the *as*, and the double-headed character of its image are derived from its relation to both cities.

Who were the inhabitants of these cities? The *montes* of the Septimontium were held by a Latin race; the *colles* (including the Capitol) of the other city by a Sabine stock, the Quirites. Ultimately the Quirites conquered the Septimontium, and, although that conquest was rather an amalgamation than a real subjugation, the Quirites maintained their dominant position. They constituted the patricians of later Rome; the Latins formed the plebs. To enforce his point, Binder is at great pains to remove all patrician associations from the Palatine and all plebeian associations from the Quirinal.

Having outlined his main position, Binder proceeds (pages 170–292) to consider the various theories that have been held regarding the plebs. The current views of the relation of the Latins to Rome and of the

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manner in which the plebs secured an entrance into the various magistracies of the city, he finds, are based on thoroughly unreliable and late traditions, most of them derived from the doubling of historical incidents and from fanciful genealogies.

His "legal-historical results" (*rechtsgeschichtliche Konsequenzen*), as formulated in chapter v, do not spare the Fasti, the Annales or the various *leges* of the Republic—at least till the time of Appius Claudius. In this conclusion he is in substantial accord with Pais, *Storia d' Italia*. When he discusses the XII Tables (pages 488–528) and the attacks upon their authenticity made by Pais and Lambert, he is much more conservative. He accepts the XII Tables, in the main, as they have come to us. In his scheme, they are the code in which the two legal systems of Quirinal and Septimontium were fused into one.

The last section is an analysis of the ancient Roman kingdom. Binder holds that Roman royalty was at all times elective and double. The development was interrupted by the conquest of Rome by foreigners, the Etruscans. When Etruscan rule ended, the institution of the double consulate was rather a restoration than an innovation.

Obviously the chief objection to Binder's picture of a Sabine patriciate and a Latin plebs is the literary tradition, which represents Rome as an Alban-Latin foundation and knows of foreign (Sabine or other) influx into the patriciate only in certain definite cases. Binder is, therefore, as has been stated, forced to take issue with that tradition. Judgment regarding his success will be rendered according to the reader's bias. Those to whom the tradition in itself has no force will accept, as Binder does, Pais's destructive analyses. But the net result of the Italian historian's criticisms is simply a demonstration that Roman historical tradition, in the piecemeal form in which it has come down to us, is far from possessing the fullness or accuracy that we demand for the authentication of modern historical developments. Yet, as Binder admits, Pais has not established that this historical tradition is fictitious. The only logical result of Pais's views is to forego any attempt to reconstruct Roman history.

As an illustration of the manner in which Binder gets rid of traditions which he finds objectionable, we may take his treatment of the *gentes*. He has a single phrase, "gentile vanity," to account for every case in which the same *gens* appears as patrician and plebeian. In this way he quickly disposes of the patrician Junii, Marcii and others whom the annals mention. It is curious, however, that he says nothing of the ultra-patrician Claudii, of whom, as early as the third century, there was a plebeian branch not only in existence but already illustrious.

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A further instance of hobby-riding deserves to be cited. It is part of Binder's theory that the sacral severance of patricians and plebeians and the denial of *connubium* between them was due to the fundamentally different family systems prevailing in the two orders. Following Bachofen and Bernhöft, he maintains that the plebs lived under the matriarchate, while the patricians were patrilineal. To substantiate this, Binder makes the matriarchate general among all the Latins. His arguments, however, consist largely in exaggerating every indication of a relatively higher social position of women among the Latins than may have been found elsewhere. Isolated references to maternal ancestry—particularly the Etruscan maternal genealogies—are erected into determining facts. It need not be pointed out how unconvincing such arguments necessarily are. But in the discussion Binder dwells insistently on the feeling of the *patres* toward the plebs, as shown in such Livian phrases as *more ferarum*. In view of his refusal to accord any historical validity to the *lex Canuleia* or to the agitation of which it is represented as the outcome, it is somewhat singular that Livy's reports of the debates in the Senate concerning this law—reports which are surely nothing more than an imaginative reconstruction of what might have been said—should be made the basis of an elaborate theory.

At various times the following hypotheses have been offered for the origin of the plebs: (1) They were the conquered inhabitants of the Tiber community and its surrounding hamlets. The conquerors may be considered to have been men of the same race or foreigners, Sabines or Etruscans. Essentially, this is Niebuhr's view. (2) They were the clients of the original Romans (Ihne). (3) They were the clients, but among them were not only the *clientes* proper but also enfranchised slaves, residents who drifted into the city from the neighborhood and forcibly imported inhabitants of conquered towns (Mommsen). These theories do not by any means exhaust the hypothetical possibilities. There is evidence that in Rome, as in many Greek communities, the patricians formed a usurping aristocracy of wealth and official position. And doubtless the numerous factors that went to make up the earliest Roman community can be arranged in permutations that will result in many other theories of origin. It is perhaps worth while to note that the theory of a foreign conquering nobility, so jealously insisted upon by Binder, and the theory that the plebs sprang from the clients are by no means mutually exclusive. The plebs may have been of thoroughly composite character. Ihne's attacks upon Niebuhr's theory showed only that it was inadequate to explain all the phenomena. Binder's

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own views, which reproduce, in a modified form, to be sure, Niebuhr's theory, may be fitted into the scheme of many other investigators as a supplementary explanation.

That Binder's hypothesis is ingenious no one will deny. It is, however, scarcely entitled to more than a serial number in the catalogue of hypotheses that have preceded it and will undoubtedly follow it. The problem of the plebs is assuredly not solved by it.

MAX RADIN.

NEW YORK CITY.

Popular Law-making: A Study of the Origin, History and Present Tendencies of Law-making by Statute. By FREDERIC JESUP STIMSON. New York, Charles Scribner's Sons, 1910.—xii, 390 pp.

The real subject of this book is American legislation of the present day. After devoting five chapters to English customary and statute law, down to the founding of the American colonies, Mr. Stimson suddenly translates us to our own country and century and has little to say of the intervening time or of other lands.

Perhaps it would have been better if he had confined himself more narrowly to the American field. The reviewer is reminded of an occasion when Voltaire, sent on a mission to Potsdam, would talk nothing but diplomacy while King Frederick would talk nothing but poetry; for Mr. Stimson, who has watched our legislation carefully for twenty years and who has, perhaps, an unrivaled acquaintance with it, sometimes prefers to talk about a period of English history of which his knowledge is more limited. He gives wrong dates for the insurrections of Wat Tyler (page 69) and Jack Cade (page 74) and calls the Angevins "Norman Kings" (pages 24, 49). He crowns with an aureole the image which Freeman set up for Englishmen to worship. Representation is an invention "peculiar to the Anglo-Saxon people" (page 3).

> As the tribes got amalgamated, . . . the necessity of greater organization probably became obvious to them at once, and the Witenagemot readily assumed a more formal form; and that resulted in representation. . . . Obviously you couldn't put all the members even of East Anglia in one hall or in one field to discuss laws, so they invented representation. . . . That was the second stage of the Witenagemot, and it properly begins to be called the Great Assembly or Council of the people [page 5].

Of this singular statement it is enough to say that if the Witenagemot represented the English people, the people of the Roman empire were represented by Tiberius and Diocletian. Personal liberty is another invention peculiar to the Anglo-Saxons, we are told; and it led "the

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people" to establish this representative legislature (page 3). When did the people do it? And since there was no personal liberty in Castile or France, how did there come to be a Cortes and a States-General? More than once (pages 13, 23, 24) it is asserted that the Great Council refused to grant "aids" to the Norman kings without securing a recognition of the old laws of England. Since there are no authorities for this assertion, Mr. Stimson does not give any. Nor would he be able to show that the Normans, at the time of the Conquest, "brought just as much the notion of the Roman Law into England as if they had been Caesar's legions" (page 11).

Nevertheless, the early chapters are serviceable. They give an excellent description of the common law and enable us to follow criticism of American legislation more intelligently. Mr. Stimson discusses that legislation under thirteen heads, among which are property rights, trusts and monopolies, labor, political rights, criminal law; and his comments are always interesting. The police power, as exercised "by the arbitrary ruling of some board, or even single commissioner, and often, so far as the statute is concerned, without a jury or even an appeal from the commissioner's ruling to any court of law," he regards as "the most dangerous tendency that now confronts the American people" (page 141). "The whole mass of legislation that recognizes political parties and applies to anything happening up to the date of election should be expunged from the statutes" (page 290). The new nominating machinery "really intrenches the machine—the professional politician—in power. The general public will not and should not be compelled to do more work than is necessary" (page 288). "Socialists urge that the institution of marriage is bound up with that of private property. There is little doubt that the women's suffrage movement tends to socialism, and, also, paradoxical as it may at first seem, to lax marriage laws and easy divorces" (page 326). But such an opinion could scarcely be based on the existing divorce laws of our states.

Mr. Stimson believes that 25,000 new statutes annually are more than we need. "Administrative law-making for the machinery of government there must always be, but for the rest, if we rely on the common law and its natural development alone, our condition will be far less hopeless than most of us imagine" (page 117). Moreover, the laws are wretchedly drafted, and they are inaccessible because not properly revised or codified. With respect to the Hepburn Act Mr. Stimson says: "I venture to assert boldly that any competent lawyer who is also a good parliamentary draftsman could put those twenty-seven pages of obscurity into four pages, at most, of lucidity, with two days'

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honest work" (page 362). Only fifteen states have a properly authorized revision of their statutes; thirteen others make no pretence of having one; nineteen others are in the position of Arkansas, whose revision is "approved by Sam. W. Williams." In the revised statutes of New Mexico, 1897, the solicitor-general of the territory admits that a large part of the laws therein printed are obsolete or have been repealed by later statutes.

The book is expanded from a course of lectures and is written in an easy style which sometimes recalls Sir John Seeley. Mr. Stimson is never tedious. It is worthy of notice, at a time when a knowledge of polite literature is rare among our specialist writers, that he knows his Ruskin as well as his law and can convict the author of *Twelfth Night* of having read the Statutes of the Realm for the year 1285. But this will surprise no one who has read any of the short stories which Mr. Stimson used to write.

E. M. Sait.

Columbia University.

The History of the Telephone. By Herbert N. Casson. Chicago, A. C. McClurg and Company, 1910.—315 pp.

This book is an enthusiastic "write-up" of the Bell telephone—its invention, its promotion, its struggle against competition, the business organization which has handled it, and its meaning as an instrument of social economy. All this makes a wonderful story; and, but for its touch of special pleading, the book would be a notable contribution to the literature of public utilities. Boys and young men might easily find the tale of the telephone as engrossing as any wholesome tale of adventure now available. It is, therefore, to be regretted that Mr. Casson seems to substitute the American Telephone and Telegraph Company in place of Uncle Sam as the symbol of true Americanism. Every man connected in any important way with this company, from Alexander Graham Bell himself to U. N. Bethell, president of the New York Telephone Company, and J. J. Carty, telephone engineer, is seen in Mr. Casson's book as a divinely appointed agent, appearing in the very nick of time and supremely fit for the particular function he undertook to perform. Despite their fitness, however, the group of men who, during the past forty years, have built up the Bell system have all along had a hard struggle with the world and even with the telephone itself. Delicate and complex problems of telephone engineering spring up over night as fast as old difficulties are overcome. Public indifference or hostility, guerilla competition, in a business where

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monopoly should be left to work out its beneficent purposes undisturbed, and governmental ownership or unwise regulation have made the task of these heroic benefactors of the human race almost, but not quite, an impossible one. The telephone men, however, have fared better in the United States than elsewhere.

> This one nation, which owns six per cent of the earth and is five per cent of the human race, has *seventy* per cent of the telephones. . . . Too much government! That has been the basic reason for failure in most countries. Before the telephone was invented, the telegraph had been made a state monopoly; and the telephone was regarded as a species of telegraph . . . . The fact is that the United States is the first country that has succeeded in putting both telephone and telegraph upon the proper basis. Elsewhere either the two are widely apart, or the telephone is a mere adjunct of a telegraphic department. According to the new American plan, the two are not competitive but complementary. The one is a supplement to the other. . . . To make the telephone an annex of the post office or the telegraph has become absurd. There are now in the whole world very nearly as many messages sent by telephone as by letter; and there are *thirty-two* times as many telephone calls as telegrams. In the United States, the telephone has grown to be the big brother of the telegraph. It has six times the net earnings and eight times the wire, and it transmits as many messages as the combined total of telegrams, letters, and railroad passengers. There can be few higher ideals of practical democracy than that which comes to us from the telephone engineer. His purpose is much more comprehensive than the supplying of telephones to those who want them. It is rather to make the telephone as universal as the water faucet, to bring within speaking distance every economic unit, to connect to the social organism every person who may at any time be needed. . . .
>
> The effort to conquer time and space is above all else the instinct of material progress. To shrivel up the miles and to stretch out the minutes—this has been one of the master passions of the human race. And thus the larger truth about the telephone is that it is vastly more than a mere convenience. . . . It is nothing less than the high-speed tool of civilization, gearing up the whole mechanism to more effective social service. *It is the symbol of national efficiency and coöperation.*

While Mr. Casson's book might tend to give youthful readers an unwholesome notion of the unimportance of ordinary civic institutions as compared with the Bell Telephone Company, it can safely be used by well-seasoned citizens as a book from which to read selections to their children or their students when wholesome thrills are desired to inspire inventive genius.

DELOS F. WILCOX.

ELMHURST, N. Y.

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The Economics of Railway Transport. By SYDNEY CHARLES WILLIAMS. New York, The Macmillan Company, 1909.—300 pp.

Transportation in Europe. By LOGAN G. MCPHERSON. New York, Henry Holt and Company, 1910.—273 pp.

The discussion of the subject of transportation has become so involved in the consideration of details that it tends to clear one's thinking to read a book which treats of the elementary principles of transportation and which does not burden the reader with a long recital of the historical development of transportation facilities. The first of the volumes under review is the result of a series of lectures delivered at Cambridge University. The author presents the facts and principles of transportation in their broad relation to economic activities. The volume is divided into three parts.

Part I is devoted to a definition of transport, a brief historical survey of its origin, and an analysis of its economic function.

Part II treats of the "production of railway transport," that is of the mechanics of transportation. It is not, however, a mechanical discussion, for the author discusses such topics as grade, gradient, curvature and classification of goods in their economic bearing and not as engineering or operating problems. A similar discussion is made of such problems as size of trains and vehicles, fluctuations in traffic and related problems of operation.

Part III, which is devoted to "the distribution and consumption of railway transportation," will doubtless be found of greatest interest to the students of economics; this is particularly true of the pages in which the author considers the effect of transportation on the price of goods. He attempts to show the practical impossibility of determining railway rates on the principle of cost of production, concluding "that the attempt to arrive deductively at a basis for railway rates, founded on admitted economic principles, is beset with difficulties and dangers." The rationale of rate differentiation is, the author maintains, "quasi-monopoly for some but not for all traffic and joint cost." It is futile, he decides, "to attempt to give in one word or phrase the theory of such a complex subject as railway rates."

The volume was intended for students of economics and for practical railway men, and particularly for the English public. Each class, both in Europe and America, will find much in the book to interest them. It is a great misfortune that the manuscript containing such interesting material was not more carefully revised. Not only has it been neces-

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sary to provide the reader with *errata* and *corrigenda*, but there are errors in punctuation, in quotation and in form not included in the list. References are injected in the body of sentences in a manner which confuses the reader. Almost all the first part might with advantage have been placed in the last part, and minor improvements in the arrangement of the topics suggest themselves on even a cursory examination. None the less, the book is distinctively different from the ordinary volume in English on transportation, and the difference is of a kind which will doubtless commend it to many students of the subject.

Mr. McPherson's *Transportation in Europe* is based upon a report which he made to the National Waterways Commission regarding the methods and operation of transportation in European countries. The book treats of the economic aspects of the subject and concerns itself primarily with two topics, the relation of the state to transportation and the relation of water carriage to rail carriage. After a general sketch of transportation development in Europe, in which the difference between the United States and Europe in regard to physical configuration, industrial development, political and social ideas is described, the author examines the situation in each country. Those who are disposed to find parallel situations in the United States and a single European country will find much in the author's treatment to disturb their comparison. Comparisons in freight service, so far as they can be made, are favorable to the shipper in the United States. The organization and localization of industries and the social and political ideas are, however, so different in almost any continental country of Europe from those prevailing in the United States, that it is easy to overemphasize the benefit to be derived from a study of European transportation systems as a guide for action in this country. The general conclusion of the author in regard to state ownership of railways is that it leads to inelasticity in rates and, in some countries, to inefficiency in operation. In France, Belgium and Italy, where socialistic tendencies are marked, there is a disposition to increase unnecessarily the number of railway employees. Only in Holland, where the railways are leased, does the author find general efficiency. In Prussia a revenue to the state is secured from their operation, but as regards industrial efficiency the Prussian railways fall far below the American.

It is, however, the part of the book devoted to inland waterways which will prove most interesting to American readers. While in European countries high-value commodities make up the chief part of railway traffic, yet the bulky low-value commodities also move by rail. Waterways are valued in Europe, in some cases, for other than transpor-

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tation purposes, as, for example, to prevent inundation, to reclaim and to irrigate land. The rates on waterways are not subject to governmental regulation. The watercraft pay a small toll on canals but none on natural waterways. They charge whatever the traffic will bear, and in most countries they are favored by the state officials, who so regulate rail rates as to favor water transportation. The author argues that the favorable attitude of the state towards waterways is due in part to the fact that greater transportation facilities are needed and the state, as such, is unwilling to make the large capital outlay which is necessary to supply adequate railroads. In order to secure traffic for the great seaports, such rates are made for interior regions as will secure the movement of the goods to these ports rather than permit them to pass over the frontier to a foreign port; for example, the commodities of South Germany move by water or by rail to the North Sea rather than by rail to the Mediterranean ports. In Germany, in 1905, waterways carried only one-seventh of the total traffic; and the author concludes that "waterways in this country are lagging behind in the race with railways." He finds much the same situation in other European countries, for "the length of waterways has remained constant for thirty years." The Rhine and other rivers which are estuaries continue to be of great service, but this is because they are estuaries, reaching industrial regions which have suitable water traffic, and not because of the superiority of waterways over railways for inland traffic. The review which the author gives of the situation in England leads him to the same conclusions regarding the usefulness of inland waterways in that country.

The friends of internal waterway transportation and of government ownership of railways will find little in this book to encourage them in their views. Artificial waterways in Europe, although they receive state preference and support, have not been able to maintain themselves in the competition with railways. Government operation, in many cases, has not been economical; in other cases, it has not been adapted to the rapidly changing industrial conditions. The book is well written and has a transportation map of Europe, tables and an index. While the enthusiastic adherent of internal waterways will probably not be led to change his views by Mr. McPherson's statements and arguments, the impartial student will welcome a book so interesting and so readable, even if it sometimes seems that the author found the evidence for which he was searching.

W. F. Gephart.

Ohio State University.

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Vorzugszölle. By E. TRESCHER. Berlin, Franz Siemenroth, 1908.—iv, 176 pp.

This tariff study is of a type more common in Germany than in this country. It gives a brief sketch of the development of preferential arrangements between the more important countries and their colonies, followed in each case by a description of the existing system and its influence on trade. The author believes that the effects have been highly unfavorable to German commerce.

Naturally the preference offered to Great Britain by its self-governing colonies is first discussed, and the conclusion is drawn that the mother country can hold her colonial trade by this means, and by this alone. Though Dr. Trescher recognizes that concessions thus far have been offered by the colonists out of imperial patriotism, he maintains that Great Britain can enjoy a continued and increasing preference only on condition that it so readjust its tariff system as to be able to offer the colonies reciprocal advantages. His idea is an interesting variant of the usual Chamberlain argument, that trade preference is the economic cement indispensable to imperial unity.

The French colonial system of trade restriction, now relaxed into mere preference, the author regards as eminently wise and successful in reserving colonial markets to French producers and attracting colonial products to French markets. In consistency, the author should advocate colonial monopoly.

The prefential systems of other lands are examined more briefly, in view of the less important trade dependencies of such countries. There are interesting chapters on preferential trade between neighboring states, like those of Central America, and between states more or less closely allied, like the United States and Cuba or France and Haiti.

The author sees the whole world moving in the direction of customs unions, whose members will maintain more or less common tariffs against the outside world and lower rates against one another. Great Britain and its colonies form one happy family; France and its dependencies another; Pan-America rejoices, albeit a bit ruefully, in a union imposed by the United States; but Germany sits twiddling its thumbs and whistling for its lost markets in a world of high tariff walls and preferential gateways. Is this the same world in which the United States and Germany have been for years rushing in and seizing the trade of sleepy John Bull, and in which the disagreeably efficient Germans have been snatching away our South American markets till we cry out for ship subsidies? It is all too distressing. Was there after all

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something in the old-fashioned notion that any given trade was likely to go to the country having the greatest relative advantages for it?

The value of Dr. Trescher's book lies in its careful though brief description of the history and status of preferential tariffs. One may concede that such tariffs have a certain influence in determining the direction of trade without allowing the preponderant effect attributed to them by the author. His conclusions on this point rest on too narrow a statistical basis and require much more confirmation than he furnishes. Equally unsatisfactory is his attempt to show an all but universal movement toward trade preference. Undoubtedly, as overgrown industries pass the point where the home market can take their whole product at satisfactory prices, and as they are harder pressed in neutral markets, they will try to induce government to fence off for them colonial as well as home preserves, and they will urge friendly states to build higher barriers against others than against themselves; but will they necessarily always succeed? Capitalistic industry indeed presses constantly forward in the mad race for expanding markets, and it will use preferential tariffs in that race if it can. Moreover, the more completely a country is industrialized, the more urgent becomes its need to hold old markets and develop new ones, as Great Britain has been learning to its sorrow. The new industrial Germany perhaps does well to look far forward; but in view of its marvelous trade expansion during the past forty years, and in view also of the industrial vitality of its supposedly decadent rival across the North Sea, perhaps it is a little early yet for anticipatory wringing of hands.

HENRY R. MUSSEY.

COLUMBIA UNIVERSITY.

Valuation: Its Nature and Laws. By WILBUR MARSHALL URBAN. London, Swan Sonnenschein and Company. New York, The Macmillan Company, 1909.—xi, 433 pp.

Four decades have passed since Jevons based his final-utility theory of value on the pleasure-pain psychology of Paley, Bentham and Bain. Perhaps these decades have shown the greatest amount of productive scholarship in the fields of the natural sciences, and certainly not the least important among these have been the researches in analytic and experimental psychology. In the course of forty years a great mass of information has been collected about the facts of consciousness and the laws of human activity. Among the myriad aspects of the latter, one type of activity has a significant interest for widely different groups of thinkers. Man not only perceives, knows, chooses or

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rejects, but he sizes things up, he appraises or *values*. Evaluation comes to be recognized not as a mode of consciousness second to or dependent on any other mode but as one of the paramount aspects of life. Following the work of the Austrian economists, and perhaps incited to research by the slenderness of their psychological foundations, Brentano, Ehrenfels, Meinong, Schwarz and a host of younger scholars have approached the theory of value by way of logical and psychological studies. They have for the most part formulated a theory of value in general terms, which might cover ethical, æsthetic and economic value. But much of the most recent work in the psychology and logic of valuation has had no appreciable effect on the current economic concepts of want, declining utilities, total and marginal utilities, upon which are based analyses of demand. The theoretical chapters of our text-books are full of the rags and tatters of utilitarian psychology. It is a matter of thankfulness if our profounder works are free from them.

To the student of economics, then, Professor Urban's book has an especial and timely interest. In the first place, it states the philosophical aspect of the theory of value, with the psychological and logical problems involved and the psychological and logical methods of solving these problems, thus giving for the first time in English a survey of the whole field of value and of the work done in this field by modern students. Secondly, it makes a special application of the general laws of valuation to economic phenomena. And though the economist may not find in this book all that he wants to know about the psychological foundation of his science, he may at least bound the area of his ignorance.

As it bears on economic theory, Professor Urban's book may be divided into three parts. Chapters i-v inclusive give an analysis of the consciousness of value and the psychological basis of a theory of value. Chapter vi outlines the laws of valuation with especial reference to the valuing of economic goods. In chapters vii-xiv various types of value are analyzed, and their relations to one another in a general system of value, or in a general process of evaluation, are indicated.

"The psychological laws of valuation," according to Professor Urban, "are the laws governing the change in actual feeling as determined by changes in its presuppositions, actual and dispositional." In economics these laws are three in number and may be described as the laws of the relativity of worth feelings. In other terms they are perfectly familiar: (1) The law of marginal utility, called by Urban "the law of the threshold," states in general "that the power of an object,

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or rather of a given quantity of an object, to call out worth feeling and judgment, is a function of a disposition created by a previous feeling." (2) The law of declining utility, called by Urban the "law of diminishing value," "is a statement of the fact that the change in the capacity of an object for valuation is a function of the effect of previous worth feeling." (3) "The law of complementary values" is a formula describing the "modification of the capacity of an object for calling out worth feelings, as determined by the combination of the primary object with other objects."

The formulation of these three laws of value and five or six underlying psychological laws make up Urban's contribution toward solving the appreciative or psychological problem in valuation. The "rationality," however, of any act of valuation, its relation to all other elements in human experience, is an axiological problem, "the only possible criterion of which is an internal one, immanent in the process of valuation itself." The statement of the axiological problem involved in valuation, which is the most illuminating part of Professor Urban's work, places the theory of value in a general philosophic system and relates it to all other branches of speculative thought. In method and analysis the book ranks with Meinong's best work.

MARION PARRIS.

BRYN MAWR COLLEGE.

Cours d'économie politique. By GEORGES BLANCHARD. Tome I: La Production, la consommation et la plus grande partie de la répartition. Grenoble, Allier Frères, 1909.—vi, 712 pp.

The growing place and importance of political economy in the curriculum of the French law schools, which led to the appearance of Professor Gide's *Cours d'économie politique*, is responsible also for this stout volume from Professor Blanchard. Like Professor Gide's treatise, this book teems with discussions of present-day problems; as in its prototype again, the style is lucid and graceful, if not so sprightly and interesting; and to complete the resemblance, the length of the treatise is caused rather by the multiplicity of the "problems" which it considers than by any profundity of analysis. As might be expected, special attention is given to those departments of the subject which are jointly occupied by economics and jurisprudence; topics such as property rights, for example, are far more adequately treated than is customary in English and American treatises on political economy.

In tone, the work is rather persistently conservative. The reader rather tires of the recurrent refutations of socialistic doctrine, for in-

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stance; and at times the author is led by his conservatism into rather questionable positions, defending private property, for instance, as a natural right, and insisting strenuously that small enterprise is more than holding its own against *la grande industrie*. In support of the latter contention he cites American census statistics showing the growth of the number of establishments in the manufacturing industries, despite the warnings of American census statisticians and their evident belief that the major movement is in the opposite direction.

But despite this conservative tendency, the treatment is catholic and eclectic; and the conservative *pro*'s are nicely balanced as a rule by an equivalent row of more liberal *contra*'s. Occasionally, this classified survey of opposing facts and opinions becomes somewhat artificial, and the author has to strain a point to preserve the equilibrium, as when, in opposing the *avantages des machines* with the *inconvénients des machines*, he lays down the proposition that machinery has greatly augmented productivity only in transportation and manufactures, and has done comparatively little to increase productivity in the three industries indispensable to man, the production of food, lodging and clothing. To further pad the *contra*'s at this point he adds that the reduction of prices caused by the invention of machinery has profited the employer much more than the wage-earner—a doubtful proposition, which has no place in a text-book unless it can be given more than the seventeen lines of proof which the author devotes to it. A similar objection may be registered against the author's dogmatic assumption (page 493) that with the passage of time profits tend to fall. He has much precedent for this assumption, but "the quantity of precedent is equalled only by the paucity of the reasoning on which it is based." It is one of the most questionable and one of the most enigmatic deliverances of the text-book writers. Are the profits which so steadily fall profits per unit of product or per unit of industry or per entrepreneur? Is the downward tendency common, from the very beginning, to the new industries which constantly arise, as well as to the older industries? And upon what proof does the asserted tendency rest?

The book contains practically nothing new in the way of doctrine. The author is content to accept his theory second-hand, for the most part, and occasionally his selection does not appear very fortunate, as, for instance, when he follows Gide in defining individual capital as *every object which serves to procure the individual a revenue without any labor on his part*. There may be some justification unknown to the reviewer for this limitation of individual capital to objects capable

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of yielding a revenue without work or management, but the definition is in appearance so faulty that it demands something more than mere statement to justify its use. For apparently there are many forms of individual wealth—patent rights, franchises of many sorts and those other property rights growing out of the power to "exclude"—which are not social capital and which nevertheless are frequently worked and managed by their owners.

To teachers of political economy, probably the most interesting feature of the work is the attempt to present the subject of production and distribution, or its main outlines, without any consideration of value and exchange, the discussion of which is reserved for a future second volume. This arrangement, for which the author apologizes and for which he has very good precedent, is by no means a failure. On the contrary, the treatment of production is uncommonly good, and the student who follows the discussion of distribution will find an unusually interesting, lucid and easy explanation of a difficult subject. But after all the discussion does not come to a point. It is interesting and valuable to know what Adam Smith says about wages, what Ricardo says of Adam Smith, Marx of Ricardo, Gide of Marx, and Blanchard of all of them; but what is most wanted is a clear-cut statement of the precise manner in which wages are determined. One finishes such a treatment with an increased respect for Bastiat, Whately, Macleod and others who wished to restrict economics to value and exchange. Value after all is the soul of the science, and a body without a soul is only a little more satisfactory than a soul without a body.

T. S. ADAMS.

WASHINGTON UNIVERSITY.

Recollections of a Long Life. By Lord BROUGHTON (JOHN CAM HOBHOUSE). With additional extracts from his private diaries. Edited by his daughter, Lady Dorchester. London, John Murray, 1909. Two volumes: xviii, 348, xiii, 385 pp.

Under the more familiar name "Hobhouse," Lord Broughton's life and work are fairly well-known to all students of that fascinating period of English social and political history roughly coincident with the Napoleonic influence. A "staunch, almost fierce" Radical, he entered Parliament as a member for the famous Westminster electorate, became a leading figure in the councils of the Reform wing led by Burdette and Romilly, developed "by a natural process of evolution into a Whig," and ended, as Lord Roseberry dryly remarks, "in the order of congruity as a peer."

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But by the ordinary reader any close acquaintance with the varied events of Hobhouse's full life has been derived, indirectly, from the memoirs and autobiographical material of the period. In his later years, indeed, Hobhouse wrote his *Recollections* and caused them to be printed, in the sixties, in five volumes. But for some reason or other the work was never published, and copies have never been had for the asking. Now, using the early volumes of her father's reminiscences so printed as a basis, and availing herself in connection therewith of a large amount of manuscript material—correspondence and diaries—Lady Dorchester has edited the two attractive volumes before us, covering the periods, respectively, of 1786-1816 and 1816-22. Mr. John Murray has prefixed a brief "Note by the Publisher" and the Earl of Roseberry has contributed a charming preface.

To the student of politico-economic life and thought the great interest of the two volumes is their incidental testimony. In this sense Hobhouse is significant, not as friend and intimate of Byron nor as devoted contemporary spectator of Napoleon's last phase, but as an active figure in the brilliant coterie that shaped English social-economic thought and action in the first quarter of the nineteenth century. Mr. Graham Wallas, in his admirable *Life of Francis Place*, has given us some idea of Hobhouse's influence. Other interesting glimpses are to be gathered from Lady Seymour's *Pope of Holland House* and from the several collections of Ricardo's correspondence. But, naturally enough, it is from the present volumes that the first intimate acquaintance with the character and every-day activities of the man proceed.

Hobhouse, like Dumont, Place, Grote and the Mills, took his radicalism from Bentham; and his literary skill, like theirs, was laid under requisition by the sage of Ford Abbey. "I never was to translate Mr. Bentham," Hobhouse wrote to Place, "I was to arrange his manuscript and put his work into the vernacular." The heterodoxy of Hobhouse established beyond doubt, Place selected him to represent the Westminster constituency made vacant by Romilly's death, and, after one defeat and a term in Newgate, election was secured. He was an active figure in the House of Commons and an aggressive supporter of all reform legislation. He was admitted to the inner councils of the Whig party, even though its high priest, John Whishaw, entertained no flattering opinion of him.

It was as a welcome visitor in Whiggish circles and as reform spokesman in the House of Commons that Hobhouse's lines crossed those of Ricardo, resulting in several useful additions to our scanty biographical store. Thus on October 15, 1821, Hobhouse reports in his journal:

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"Rode with Sir Francis to Easton Gray. Ricardo dined with us. We had a violent argument. He would contend that to raise one man degraded others. This is a dogma of Mill's." If any irritation lingered, it was certainly allayed by Ricardo's expressions a few months later upon Hobhouse's speech for the repeal of the window tax: "I had great compliments from all sides on the speech," Hobhouse records with much contentment; "Ricardo told me that, though he did not agree with all my political economy, yet what I said was very well said." Of even greater interest is confirmation of the story which McCulloch, borrowing from the *Annual Obituary* memoir, tells as to the circumstance responsible for Ricardo's first interest in political economy:

> Dined with Lambton—an immense party and splendid dinner. I sat next to Ricardo, who told me he never thought of political economy till happening one day, during an illness of his wife, to be at Bath, he saw an Adam Smith in a circulating library, and turning over a page or two ordered it to be sent to his house. He liked it so much as to acquire a taste for the study.

The terminal date of the present volumes is 1822, marking thus considerably less than half of Hobhouse's life and embodying hardly more than the beginning of his political career. Students and readers alike will await with interest the appearance of further instalments from the rich store of documentary material of which the books at hand are so valuable an exhibit.

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BOOK NOTES

Professor Edward Meyer has collected a number of his scattered essays, dealing chiefly with the economic and political history of the ancient world, under the title: *Kleine Schriften zur Geschichtstheorie und zur wirtschaftlichen und politischen Geschichte des Altertums* (Halle, Max Niemeyer, 1910; 555 pp.). After a prefatory essay on the theory and methodology of history, we find the now famous chapters on the economic development of antiquity and on ancient slavery. These are followed by essays on Alexander the Great, on the Moses legend, on the origin of the Roman tribunate, on the Gracchi and on Emperor Augustus. The volume closes with the necrologies of four prominent German historians. In the essay on slavery no attention seems to have been given to the researches of Nieboer.

The first volume of the text of Thomas Hughes's *History of the Society of Jesus in North America, Colonial and Federal* (London, Longmans, Green and Company, 1908; xiv, 647 pp.) is devoted chiefly to describing the labors of the Jesuits in Maryland up to 1645. It forms the initial part of a general account of the activities of the society in English-speaking lands, which in turn is to form a part of a vast series of works already under way, embracing in different languages a comprehensive history of the order in the entire world. The expression "colonial and federal" in the title indicates the exclusion of the French and Spanish Jesuits from consideration in the present volume. The opening chapters afford an illuminating insight into the Jesuit and other records existent in England, Ireland, Belgium, France, Italy, the United States and Canada, which Father Hughes has examined and uses with scrupulous care. In the narrative that follows the author displays a degree of scholarship, alike exhaustive, accurate and judicious, which renders his statements authoritative. In a treatise that had to be written from a partisan standpoint, the presentation is surprisingly free from controversial distortion. Those who have had occasion to observe the patient, minutely acquisitive zeal with which the members of the society spend year after year in searching out and copying all that remotely or immediately concerns their order must welcome this valuable contribution to historical literature.

Volume xix of the Collections of the State Historical Society of Wisconsin (Madison, Wisconsin, 1910; xxii, 528 pp.) contains the

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final instalment of the registers of baptisms, marriages and interments of the mission of Mackinac, 1695–1821, of which the first part appeared in the preceding volume. It contains also much valuable material bearing upon the fur trade in the Northwest, including the journal kept in 1804 and 1805 by François Victor Malhiot, a *commis*, and a series of documents relative to the fur trade on the upper lake from 1778 to 1815 and in Wisconsin from 1815 to 1817. A compact preface and many pertinent foot-notes and illustrations give an admirable setting to the originals.

The first of the Justin Winsor prize essays to be published separately and in book form by the American Historical Association is Professor Clarence Edwin Carter's work on *Great Britain and the Illinois Country, 1763–1774*. The study is based almost entirely upon manuscript material, especially that found in the Public Record Offices and in the British Museum. The subject of the British possession of the Illinois country is one about which little is known. Professor Carter shows clearly that with respect to the lands temporarily reserved by the proclamation of 1763 for the use of the Indians, of which Illinois formed a part, the leading consideration in the minds of British statesmen was the development and monopolization of the fur trade. Little was known of the needs of the French communities; no civil government was provided for them until the passage of the Quebec Act; and owing to the outbreak of the Revolution the provisions of that act were not extended to the Illinois settlements. Such powers of government as were exercised by the British commandants in Illinois were purely *de facto*, and rested upon no legal foundation. From the point of view of the fur trade, British possession of the West was a failure. Fur belonged to the class of "enumerated" articles, which could legally be exported only to a British port. The Spanish town of New Orleans, however, was the natural *entrepôt* for the trade of the Mississippi Valley, and thither were transported the bulk of the peltries secured in the territory drained by that river. From New Orleans they seem to have been shipped to France and Spain, not to England. Professor Carter states that the importation of fur into England actually declined after the acquisition by Great Britain of the great peltry-bearing regions. He concludes that the British government gave up hope of commercial profit from the West by about 1770. Such a view, on their part, would go far to explain the final abandonment of the West by Lord Shelburne's government in 1782.

Mr. Eugene Pivány's pamphlet, *Webster and Kossuth* (Philadelphia, Latin Press Printing and Publishing Company, 1909; 23 pp.),

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contains nothing new. Indeed by its omissions and mistaken emphasis a false impression is given of the significance of events which are well known even to the general reader of American history; and it gives us practically nothing on Hungarian history. Kossuth is much praised, and rightly so; but nothing is said of the real meaning of his wonderful reception or of the failure of his mission. Both Kossuth and Webster were great nationalists and both were orators. But Webster, though defending the principle of Hungarian nationalism, declared (Correspondence, volume ii, page 501), that he would be deaf to a plea for American intervention in Hungarian affairs. The reception given to Kossuth by both houses of Congress is described; but nothing is said of the angry debates as to whether any reception should be given. The famous Hülsemann letter is praised; but its character as an appeal to American nationalism and patriotism is almost ignored. The visit of Kossuth to this country and the attendant outburst of popular feeling have indeed much more significance for the student of American social characteristics than importance in the history of Hungarian affairs.

The Evolution of Law (New York, The Borden Press, 1908; 165 pp.), by Mr. Henry W. Scott, of the New York bar, bristles with novel views. Gnæus Flavius, who "betrayed the laws and forms of procedure" at Rome, and who is commonly supposed to have lived three centuries before Christ, appears on page 124 as "Gaius" or "Caius" and on page 142 as "Cæus Flavius" (with the spelling of his name, the author says, "we have no concern") and is identified with the Gaius who wrote "certain Institutes" in the second century of the Christian era. In "all ancient countries," we learn, women were devoid of rights, except among the Teutons; there they "had equal voice with the men in their Folkmoots" (page 94). When the Teutons overran the Roman world, they did not "intermarry with the women of the conquered tribes, and so did not sink to the level of the savages they sought to govern" (*ibid.*). The Saxons went to Britain "not to conquer, but to live there in peace" (page 134). King Alfred introduced jury trial into England (in criminal cases, apparently), but of course he did not originate it, for "'Lynch Law' typifies a primitive jury trial" (pages 136, 137). In the reign of Henry II "the mass of the people was represented in the House of Commons by those whom they chose" (page 139). The earliest kingship was always hereditary, for "it is reasonable to suppose" that it would be (page 75). Chinese ancestor worship is simply an exhibition of respect for the memory of parents, and it originated with

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Confucius (page 100). For these and many other equally surprising statements no specific references are given; but a "list of authorities" (pages 52–54) helps us, particularly by noting its omissions, to understand the genesis of Mr. Scott's book. He is unacquainted, for the most part, with recent work in legal history; and the notions he has derived from an unintelligent skimming of many antiquated books have been supplemented by an active imagination, almost unfettered by exact knowledge. His book is worse than worthless, it is pernicious, because it reproduces many old errors and introduces more new ones.

When Mr. Scott ceases to take all history and jurisprudence for his province and deals with a subject which is within his grasp, he appears to be able to do useful work; witness his *Courts of the State of New York* (New York, Wilson Publishing Company, 1909; 506 pp.). This book is divided into three parts: the first treats of the colonial period, 1623–1777; the second of what he calls "the constitutional period," 1777–1909; the third takes up *seriatim* all the courts which have at any time existed in the colony or state and outlines the history of each. This of course involves a certain amount of repetition, but it makes the volume convenient for reference. The manner in which Mr. Scott has dealt with history in general and with English legal history in particular in his *Evolution of Law* does not inspire confidence; but it is only fair to say that this book makes a very different impression. After the author has emerged from Dutch times, he backs nearly every statement of importance with a reference to his authority; and in dealing with the organization and jurisdiction of the courts in the period of statehood he regularly cites the constitutional and statutory texts. In the dearth of literature upon this subject, the book may prove useful. Like the *Evolution of Law*, it opens with a "Publishers' Announcement" in very laudatory vein and distinctly flamboyant language; and, although the two books are published by different firms, the two announcements are strikingly similar in style.

Dr. P. L. Kaye's *Readings in Civil Government* (New York, The Century Company, 1910; xvi, 535 pp.) is a collection of extracts drawn primarily from standard authorities like Bryce, Reinsch, Woodrow Wilson, Willoughby and Fairlie. To these extracts from secondary sources are added a few significant statutes and documents and several papers from popular and scientific journals. The whole field of state and federal government is covered. Generally speaking, the selections are made with good judgment and are well adapted to the high-school student for whom the book is designed. A few passages, for example, the section on the "Origin of Representative Government,"

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are not in accord with the most recent views; and others, like the selection from Bryce on pages 373 *et seq.*, contain statements which are no longer exact. No doubt, however, the volume will be very acceptable to teachers whose library facilities are limited.

In a new edition of her *Industrial History of the United States* (New York, The Macmillan Company, 1910; xvi, 461 pp.) Professor Catharine Coman has made some changes and additions. Of these the most important are a new chapter on "Conservation" and the expansion of the old chapter dealing with the period from 1837 to 1857 into two new chapters. The book has also been brought down to date in its references. In its improved form it will doubtless meet with the same favorable reception that was accorded to the earlier edition.

Although quite a number of recent studies have been devoted to various aspects of the history of the public domain of the United States, the story of its origin and early development is now first treated in a comprehensive manner by Professor Payson Jackson Treat, of Stanford University, in *The National Land System 1785–1820* (New York, E. B. Treat and Company, 1910; 426 pp.). The author tells us that his attention was called to the problem by Professor Max Farrand. In a final chapter he emphasizes, as a striking development in the study of American history within recent years, the recognition of the influence of economic and social forces. The volume closes with the year 1820 because that date practically marks the end of the credit system. Separate chapters are devoted to grants for military and naval services, for education and for other special purposes. It is to be hoped that the author may continue the history down to the Preemption Act of 1841 and to the Homestead Act of 1862.

Only those who are just beginning the study of economic history will be interested in *From Gild to Factory*, by Alfred Milnes (London, McDonald and Evans, 1910; 84 pp.), of which the second edition has appeared. It contains the substance of a short course of university-extension lectures and is designed to awaken interest in the study of economic history. The space devoted to a concluding chapter on the Great Death seems to be out of proportion to the rest of the book.

Dr. M. P. Roseboom's *Scottish Staple in the Netherlands* (The Hague, Nijhoff, 1910; x, 237, ccxii pp.), enriches the economic history of the middle ages by a comprehensive and well documented survey of the commercial relations between Scotland and the Netherlands. The field is a new one, and of the three or four attempts that have been made to exploit it, this is by far the most comprehensive. The author, a native of Holland, is a graduate of Edinburgh Univer-

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sity; the book, although published at the Hague, bears every mark of the British book trade; and the Carnegie Trust for the Universities of Scotland seems to be behind the enterprise. We are indebted to this peculiar international arrangement for a contribution which will have to be reckoned with henceforth in the history of Scottish commerce. The documentary appendix, which constitutes nearly half of the volume, is of especial and novel interest. The whole work is written from original material, mostly archival; this material is clearly arranged and is presented in a business-like way. The opening sentence gives the reader an accurate indication of the character of the book: "In dealing with the history of a staple trade, such as existed between Scotland and the Low Countries, there is no scope for rhetoric, and no room for the play of the imagination."

H. J. Nieboer's *Slavery as an Industrial System* has re-appeared in a second and revised edition (The Hague, Martinus Nijhoff, 1910; xx, 474 pp.). The original edition, in 1900, was everywhere well received. The new edition differs only slightly from the first. Subsequent ethnological investigations have permitted a filling-in of details and a further buttressing of the author's theories. In a few cases in consequence of criticism, the terminology has been changed.

In a bulky volume of over 600 pages, Professor Albion W. Small discusses *The Cameralists, the Pioneers of German Social Polity* (Chicago University Press, 1909; 606 pp.). The object of the work, the author explains, is to ascertain "what can be learned from them that is of permanent use for social methodology." The dozen or so long chapters devoted to writers of second- or third-rate importance, like Osse, Gerhard, Rohr, Gasser, Dithmar, Zincke and Darjes, do not yield results of great importance to "social methodology," and the author confesses that there is virtually no contribution to economic theory to be found in them. The so-called cameralistic science, as is well known, was a combination of administrative precepts and of fiscal considerations. When Professor Small had finished his book, he found that his main conclusions had already been formulated two decades earlier by Professor Marchet, in his work in German on the *Development of Administrative Science*. Believing, however, that most foreign students, at all events, still accepted the judgment of Roscher on the Cameralists, Professor Small has thought it worth while to present *in extenso* not only his own conclusions but also his evidence.

It has been a source of wonder that the admirable sketch of the French Physiocrats published over a decade ago by Henry Higgs should so long have remained virtually the only comparative study of this

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movement. The renaissance of the history of economic theory in France has now led to a comprehensive work on this subject, *Le Mouvement physiocratique en France de 1756 à 1770* (Paris, Félix Alcan, 1910; two volumes xxxiv, 617, 768 pp.), by Georges Weulersse, professor at the Lycée Carnot. In his preface the author defends himself against the double charge that the book is both too long and too short—too long, because it gives too many details; and too short, because it deals with only fifteen years. The defence is entirely adequate; if the work was worth doing at all it was worth doing thoroughly, and the period from 1756 to 1770 really marks the growth and temporary dominance of the school. After a short but good introductory chapter on the origin of the pre-physiocratic movement, M. Weulersse treats, in much detail, of the beginnings and of the development of the physiocratic sect, and then discusses, one by one, the various points in its program. Much new and hitherto inaccessible material has been brought to light. Although the general conclusions of the author do not differ in any fundamental respects from those that have been commonly accepted, emphasis is laid upon some points which have not always been sufficiently recognized. Thus the author points out that the physiocratic movement was essentially capitalist in character, and that it differed from the contemporary tendencies in England in that it laid stress on the possibilities of capitalist agriculture rather than of capitalist industry. In the one case, as in the other, capitalism was responsible for the first scientific analysis of modern industrial society. Entirely apart from this illuminating generalization, however, the work, with its wealth of detail, its admirable bibliography and its many references to minor pamphlets and collections of manuscript, will prove to be indispensable to all students of the period.

Although the Owen literature has multiplied exceedingly of recent years, there has been, apart from certain contemporary descriptions, no detailed account of the famous Orbiston experiment. Mr. Alexander Cullen has filled this gap by a well-written book entitled: *Adventures in Socialism: New Lanark Establishment and Orbiston Community* (Glasgow, John Smith and Son, 1910; 329 pp.). About half of the volume deals with a rather detailed description of the New Lanark venture, in which perhaps the only noteworthy contributions to our information consist of a number of excellent plates and photographs. The account of the checkered career of the Orbiston Community is written up very largely from the Orbiston Register.

In Berlin, in the spring of 1909, and later in Vienna, Professor Eugen von Philippovich delivered a series of six lectures, which have

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been published in book form under the title : *Die Entwicklung der wirtschaftspolitischen Ideen im neunzehnten Jahrhundert* (Tübingen, J. C. B. Mohr, 1910 ; viii, 144 pp.). In these lectures von Philippovich analyses and interprets the chief social-political movements of the nineteenth century with their resultant party groupings. Liberalism, conservatism, socialism, agrarianism and the reform movement based upon a recognition of social solidarity are the main topics discussed. In the last lecture he sets forth his view of the existing situation. Although written from the German, or, at least, from the continental point of view, these lectures are of interest to Americans, because of present tendencies in our social and political life.

Professor Charles Brouilhet has made an interesting contribution to our literature of political economy (using that phrase in the sense in which it was used by Adam Smith) by his study of four great doctrines now contending for supremacy in this field : *Le Conflit des doctrines dans l'économie politique contemporaine* (Paris, Félix Alcan, 1908 ; 297 pp.). These doctrines he characterizes as follows : conservative liberalism, social radicalism, revolutionary socialism, and revolutionary unionism (*syndicalisme*) ; and he does not treat them as "theories" or "schools," but as types of instinct arising from consciousness of kind within the different groups in the body politic. Inasmuch as economic doctrines correspond in reality to the interests, hopes and passions of specific groups, our author does not attempt the impossible task of "reconciling" or "harmonizing" them. He does not overlook the part which economic theory plays in attempting to shape the course of legal evolution, and he makes some very interesting suggestions on the double rôle which doctrines assume in practical life. The volume will help to clarify the thinking of many students of modern social questions, and it will be especially serviceable to the doctrinaire (conservative or radical) who would raise the emotions connected with temporary interests to the hallowed height of categorical imperatives.

According to M. Bourdeau, western civilization (especially in France) is threatened with two sorts of slavery : the centralized despotism of a democratic state with Jacobinical proclivities and revolutionary trade-unionism of the anarchistic variety ; and in his volume, *Entre deux servitudes* (Paris, Félix Alcan, 1908 ; 339 pp.), he discusses the social conceptions of the parties now contending for power in France : radicals, socialists and syndicalists. He notes also that the socialist movement, as revealed in the four great congresses at Paris, Amsterdam, Stuttgart and Copenhagen, is tending steadily in the direction of humanitarian imperialism as contrasted with national imperialism. By

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way of conclusion he analyses the doctrines and prophecies of Tarde, Spencer, Paul Bourget and Balzac—all of whom have expressed more or less pessimistic views as to the near future.

Professor C. A. Ellwood's *Sociology and Modern Social Problems* (New York, American Book Company, 1910; 324 pp.), which is described as "an elementary text for use in institutions where but a short time can be given to the subject, . . . for University Extension Courses and for Teacher's Reading Circles," is a book likely to prove popular. In scope and purpose it is admirable. "Aiming," as the author says, "to teach the simpler principles of sociology concretely and inductively," he has endeavored "to state and illustrate these principles chiefly through the study of the origin, development, structure and functions of the family considered as a typical human institution" and "to review special problems in the light of the general principles." These special problems are the modern family, immigration, the negro, the city, poverty and crime. Other topics are the bearing of the theory of evolution upon social problems, the growth of population, socialism, evolution and social progress. Doubtless no specialist in any of these fields would agree in detail with the policies advocated by any other person. Professor Ellwood might therefore have forestalled possible objections by indicating more clearly the inadequacy of our present data for reaching conclusive results upon many of the subjects with which he deals. A more frequent use of references, especially to original rather than to secondary sources, might also have helped to inculcate in the reader a desire for scientific accuracy and for further information. A teacher accustomed to discriminating use of texts, however, will find the large amount of important material presented in the book of great assistance as a basis for discussion. Professor Ellwood has rendered no small service by indicating how practical a bearing social theory should have upon public policy.

"Teachers in Harvard University" have published *A Guide to Reading in Social Ethics and Allied Subjects* (Harvard University, 1910; 265 pp.). This is an annotated bibliography of selected works in many different fields. The connection between these fields is not clear; it seems to be the result of an accidental grouping of subjects at Harvard. It would be difficult to explain on any other ground the correlation of the ethics of art, taxation, religious education, social progress as affected by Christian missions, and economic theory. There is, morever, a lack of unity of plan. This is evidenced by the facts that foreign works are included in some of the sections, while they are entirely omitted in others, and that some sections contain only books

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and others magazine articles. It is to be assumed that these defects will be removed in the future edition, for which the editor, Professor F. G. Peabody, hopefully anticipates a demand.

M. Maurice Bellom, of the École Nationale Supérieure des Mines, is a warm advocate of social and economic teaching in technical schools, and in his *L'Enseignement économique et social dans les écoles techniques* (Paris, Larose et Tenin, 1908; 508 pp.), he has brought together a mass of material in support of his case. He examines the programs of economic courses in large technical schools in Europe and in the United States and supports his generalizations by a detailed appendix of nearly 300 pages. He brushes aside the objections of those who claim that the technical program is already overcrowded, arguing that the congestion is due to the endless multiplication of special courses to the exclusion of the more fundamental matters, among which is a study of the actual social and economic problems facing the technically trained man in real life. Mr. Bellom finds three types of technical schools: the French, in which courses in political economy are prescribed; the German, in which for the most part, optional courses only are offered; and the American, in which the students have an opportunity to take economic courses in the university of which the school often forms a part. The latter type is not approved by M. Bellom, because the instruction offered in colleges of liberal arts is usually not practical enough in character for the technicians who are to deal with economic facts at first hand. In his concluding chapters the author elaborates an ideal course in political economy for technical students and suggests the best methods for making the instruction efficient.

An interesting and illuminating study of French rural life, introduced by the joint labors of Germain Martin and Paul Martelot, is published under the title: *La Côte-d'Or (étude d'économie rurale): Contribution à l'histoire des classes rurales en France au XIXe siècle* (Dijon, *La Revue Bourguignonne*, 1909; xxvii, 572 pp.). M. Martin began his economic study of the Côte-d'Or with the object of providing his university classes with material which they could test for themselves and therefore understand; he enlarged his field of enquiry and secured the coöperation of Martelot in order to compete for the Léon Faucher prize. Besides winning that prize and being crowned by the Institute, the book has won high praise from those who are best qualified to pass judgment. Its merits are conspicuous. Every page bears evidence of exhaustive research, patient observation and freedom from bias; and the style is so luminous that, were it not for the statistical tables and the

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footnotes, it would be easy to forget that there must have been sorrowful parturitions. While the authors give particular attention to present agricultural conditions, they connect these with the developments and changes of the last half-century, some of which, *e. g.* the transformation of the market and the application given to chemistry and biology, have been momentous. On the whole—and this will surprise those who have drawn their impressions from the melancholy pages of René Bazin—the peasants have made great advances.

> There is more well-being in the country districts to-day than in the past. . . . The spirit of association has had a fortunate development. If unions (*syndicats*) have become the organs of class struggles for the proletariat of the cities, farm laborers on the contrary have managed to find in them a powerful means of economic and social progress [page 552].

The doctrine which has been preached with such insistence during the past few years by Mr. James J. Hill, in various addresses and magazine articles, is again set forth in a volume entitled: *Highways of Progress* (New York, Doubleday, Page and Company, 1910; 353 pp.). Almost all the chapters are reprints, but, as the author tells us, they are here arranged for the first time around their logical central thought. Mr. Hill's contribution, as is well known, is the emphasis laid upon agriculture as the basis of our prosperity, and the warning to the American people that they are dissipating their birthright. Admirable as is the work that has been accomplished by Mr. Hill, it may be queried whether he is not a little too pessimistic. The change from extensive to intensive methods of agriculture will inevitably be brought about in the United States by the very fact of the increasing price of wheat. This eventually may for a time be postponed by the rapid development of the Canadian wheat fields, but that it is destined to come, before long, is scarcely open to doubt. Perhaps the most interesting chapters in the work are those which describe the rise and the fall of the attempts to develop American trade with the Orient.

Agricultural conditions in the United States have often been described by foreign observers, but so much good sense has rarely been packed into so small a compass as in Sir Horace Plunkett's, *The Rural Life Problem of the United States* (New York, The Macmillan Company, 1910; xi, 174 pp.). Sir Horace permits us to read between the lines that he is in large measure responsible for the launching of what he calls the two Roosevelt policies, namely, conservation and the uplifting of country life. In a series of notable chapters he discusses the causes and effects of rural life, the domestic life of the American

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farmer and the weak spot in American rural economy, which, in his judgment, is the lack of adequate coöperation. His analysis leads him to his final proposition, namely, the need of a country-life institute. The little book is so clearly written that it ought to have a wide circulation among farmers as well as among students of the rural problem.

A Wisconsin University thesis by Dr. John Giffin Thompson, entitled: *The Rise and Decline of the Wheat-growing Industry in Wisconsin* (Madison, Wisconsin, 1909; 250 pp.), gives an elaborate and exhaustive account of the subject and calls attention particularly to the "unique rapidity of the rise and decline" of the wheat-growing industry in the state. The monograph is divided into two parts. Part I describes "Early Conditions" and consists of two chapters, occupying together 36 pages. Part II deals with "The Wheat Industry in Wisconsin after 1850" and comprises twelve chapters. Five of these are devoted to wheat-growing proper; the other seven deal respectively with "The Flouring Industry in Wisconsin"; "Milwaukee as a Wheat Market"; "The Government Land Policy and its relation to the Wheat Industry in Wisconsin"; "Relations between the Wheat Grower and the Common Carrier"; "Other Causes of the Decline in Wheat Growing in Wisconsin and of the Change to other Farm Pursuits"; and "The Future of Wheat Growing in Wisconsin; Summary and Conclusions." The book exhibits a good deal of industry and research. Its arrangement is not beyond criticism; but it presents a collection of useful facts and is therefore a welcome contribution to our knowledge of the economic development of the West.

The World's Commercial Products (Boston, Ginn and Company, 1909; viii, 391 pp.) is the title of a book that deserves a place on the shelves of every teacher and student of commercial geography or economics. It is an admirably full description of the cultivation, harvesting and preparation of the great vegetable products that play so important a rôle in the commerce of the world. Verbal description is supplemented by a very large number of photographic reproductions, some of which are in color. Such experts as W. G. Freeman and S. E. Chandler, of the London Imperial Institute, assisted in the preparation of the work. The volume is a credit to all concerned in its production.

The broad scope of the problem of the conservation of natural resources is admirably shown in Herbert Quick's book on *American Inland Waterways* (New York and London, G. P. Putnam's Sons, 1909; xx, 241 pp.). The volume deals primarily with the inland waterways as means of transportation, but the maintenance of necessary water levels leads to a discussion of forestation, of water-storage, of irrigation

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and of water power. The author writes with an infectious enthusiasm for conservation which is obviously based upon wide study and experience. The book is handsomely as well as profusely illustrated.

The great increase in the value of New York real estate during the past few decades has given a strong stimulus to the real-estate business. To meet the need of a general hand-book on the subject, the West Side Young Men's Christian Association has published *Practical Real Estate Methods* (New York, 1909; 397 pp.). The book is based on a series of lectures delivered under the auspices of the educational branch of the association by thirty lecturers, including active and experienced real-estate operators, lawyers and public officials. It covers such topics as real-estate brokerage, management, appraisal, mortgaging, insurance, investments *etc.*, and it is intended for the practical man rather than for the student.

The British Institute of Actuaries has published a valuable book by Mr. Joseph Burn, a fellow of the Institute, entitled *Stock Exchange Investments in Theory and Practice* (London, Charles and Edward Layton, 1909; x, 321 pp.). The volume consists of twelve lectures delivered to the students of the Institute. Of these, only lectures vii to xi inclusive deal with the topic indicated in the title; the others treat of the Bank of England and of British national and local indebtedness. Nevertheless the description of the London Stock Exchange and its methods is sufficiently full to be useful to American students.

Notwithstanding the unique position of the English banking system and the number of books that have been written about it, there are several phases of its development that are little understood. On the evolution of banking processes and banking documents in England, in the period before the rise of joint-stock banking, new light was thrown by W. R. Bisschop, in a work written in Dutch and published in 1906. Of this work an English translation, with an introduction by Professor H. S. Foxwell, has now been published, under the title: *Rise of the London Money Market, 1640–1826* (London, P. S. King and Son, 1910; 256 pp.). The work shows painstaking research and contributes greatly to our understanding of the evolution of the check system. The period covered, however, is so long, and the points involved are so many, that the student of banking history would have appreciated a more detailed account (assuming the data for such an account to be available) than could be compressed into so short a treatise.

Coöperative banking is almost unknown in America. Of course it may be argued that we have not been poor enough to need it or to care about it; but it is hardly wise to neglect the great economies which

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coöperation offers on the ground that these economies are not imperative. Abroad, the importance of the movement is indicated by the fact that about twenty thousand registered coöperative banks in Germany lend annually about a billion and a quarter dollars; and Germany is fairly typical of the rest of continental Europe. A most thorough account of the development and present status of the movement is found in the third edition of Henry W. Wolff's *Peoples' Banks* (London, P. S. King and Son, 1910; xiii, 587 pp.). Professor Pierson, the Dutch economist, described the first edition as "the most complete book on the subject." In the second edition the author simply brought the work down to date, and in the third edition he has done the same. No student of coöperation in general or of coöperative banking in particular can afford to be without the work.

The urgent need of reform in our banking and currency system and the activities of the National Monetary Commission have given rise to considerable discussion of the "central bank" proposition. Of this discussion Robert Emmett Ireton, associate editor of the *Wall Street Summary*, gives an excellent review in a booklet entitled *A Central Bank* (New York, Anthony Stumpf Publishing Company, 1909; 216 pp.). He outlines the problem which confronts us in this country; tells briefly how foreign central-banking systems work; delves into the history of the first and second banks of the United States; describes concisely the several plans for a central bank that have already been brought forward; enumerates the arguments good, bad and indifferent, on both sides; indicates the result of a poll of the bankers on the question; and states his own conclusions. Having still space to spare, he adds fifty pages of newspaper clippings. Certainly no one can accuse him either of narrowness of treatment or of undue padding. The book is based on a safe reserve of fact and practical experience.

Thoroughly characteristic of the difference between German and American habits of thought is L. Gomberg's *Grundlegung der Verrechnungswissenschaft* (Leipzig, Duncker and Humblot, 1908; xi, 244 pp.). The American accountant will doubtless think that no such treatise should have been produced; that it shows only a sad waste of mental effort. To be sure, works bearing somewhat similar titles have appeared almost without number in this country, and even a *Philosophy of Accounts* is to be credited to America. But our works on the science of accounts have generally been the baldest manuals of bookkeeping, and the *Philosophy*, though a work of the highest merit, consists largely of practical suggestions in the technic of accounting. The German writer, however, is guilty of no such weakness. His

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treatise is a discussion of the position of accountancy in the hierarchy of science. He, of course, goes back to the general definition of a science and describes at length the criteria by which a real science may be identified. Then he attempts the difficult task of showing that accountancy has all the characteristics of other sciences, that its goal is the same, its method identical, its tools similar. To most American students of accounting the work will make little appeal. Even economists have ceased to quarrel as to whether they are scientists and are engaged in studying economic phenomena. The more practical-minded accountant is still less inclined to neglect the subject-matter of his discipline for the sake of metaphysical discussions as to its scientific legitimacy. The work is only the first part of a projected *System der Verrechnungswissenschaft*. The complete work, characterized by the author's undoubted scholarship, will doubtless possess an interest not found in this somewhat fragmentary volume.

The subject of paper money is one that naturally attracts economic students in South America. An essay on this subject, which Professor Guillermo Subercasaux, of the University of Chili, read before the first Pan-American Scientific Congress, held at Santiago, Chili, is published under the title: *Essai sur la nature du papier-monnaie* (Paris, Larose et Tenin, 1909; 44 pp.). The essay is interesting, not because it discloses any new principles but because it endeavors to go a little deeper into the social psychology which underlies the principles. For example, the author follows the best opinion in declaring that the value of paper money may depend upon its use as money quite as much as on the fact that it is a promise or order to pay specie; but he maintains (pages 18–20) that, in the first instance, the paper money must be redeemable and the habit of using it must be developed among the people, before it can become successful fiat money. "En réalité," he says, "cette particularité du billet à ordre a produit une sorte de mystification ou de suggestion qui a abusé l'opinion publique mais qui en fin de compte a constitué un facteur psychologique important en faveur de l'acceptation volontaire du billet, condition indispensable de son fonctionnement monétaire." People accept it "de même que les enfants acceptent avec plaisir les pilules médicinales grâce à la substance sucrée qui les enveloppe" (page 18).

The new English Finance Act of 1910 will doubtless prove to be a landmark in the history of British fiscal policy. The important changes which it has introduced have naturally evoked much literature. Two useful volumes have been compiled by J. Wylie of the Inner Temple: *The Duties on Land Values and Mineral Rights under Part I of the*

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Finance Act; and *Liquor License Duties, Death Duties, Income Tax, Stamp Customs and Excise under Parts II–VIII of the Finance Act.* (London, Jordan and Sons, 1910; 265 and 326 pp.). In these volumes the text of the various sections of the law is accompanied by valuable annotations, which include lucid explanations, cross-references and interesting historical retrospects.

Mr. C. Ashmore Baker has made an interesting contribution to the statistics of public finance in a thin folio on *Rates, being the Revenue and Expenditure of Boroughs and Urban District Councils of Ten Thousand or more Inhabitants Analyzed and Compared* (London, P. S. King, 1910; 38 pp.). He has examined the reports issued by the Local Government Board and by the education authorities and has attempted to standardize the figures of expenditures by a rather novel classification, apportioning, for instance, the figures for street maintenance, public lighting, sewerage and the like, not only per head, but also per mile. In another table, under the head of trading results, we find, in separate categories, the loan capital outstanding, the revenue, the loan charges and other expenditure and the balance. Such tabular statements are made in the case of water works, gas works, electricity supply, tramways, markets *etc.* Most of the figures are reduced to pence *per capita*, which facilitates comparison. The author proposes to expand the tables in future issues and, among other things, to analyze the results obtained from municipal services.

One of the penalties of successful authorship is the general expectation that the writer of a standard work will keep it up to date. Each revision of our tariff, accordingly, imposes a burden of revision upon Professor F. W. Taussig; and the passage of the Payne-Aldrich Act has constrained him to prepare a fifth edition of his *Tariff History of the United States* (New York, G. P. Putnam's Sons, 1910; x, 422 pp.). The distinctive feature of this edition is, of course, the chapter on the latest of our tariff laws. The Payne-Aldrich Act, according to Professor Taussig, "brought no essential change in our tariff system" and "still showed an extremely intolerant attitude in foreign trade." He believes, however, that the spirit in which this law was passed indicates that the high-water mark of protection has been reached, and that from now on the tide may be expected to recede. The chapter entitled "Some Aspects of the Tariff Question," which appeared in the earlier editions, has been omitted.

The Columbia University Press has recently issued the lectures delivered in 1909, on the George Blumenthal Foundation, by Professor Henry J. Ford of Princeton, under the title: *The Cost of our National*

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Government: A Study in Political Pathology (xv, 143 pp.). The volume deals with the American budget, or properly speaking, with the absence of a budget, for Mr. Ford presents in an illuminating way the shortcomings of the American method of committee control. He finds the chief hope of the future in section 7 of the Sundry Civil Appropriation Act of March 4, 1909, which makes it the duty of the president to coördinate income and expenditure; but he points out that even this will be inadequate to bring order out of chaos unless the president uses his veto power in connection with the separate items of appropriation bills. That the president possesses this power Mr. Ford does not doubt. Whether he will think it wise to use it, and thus perhaps precipitate a contest with Congress, is another matter. The author is not afraid of vigorous statements: he tells us, for instance, that "at present state sovereignty is a sham, with no more solid content than a dead tree eaten out by white ants" (page 79), and that "the present rule of privileged interests must be overthrown. Committee government must be superseded by responsible government" (page 120). In an interesting appendix is printed a letter from the Hon. James A. Tawney, chairman of the Committee on Appropriations, which explains the present method of budgetary procedure.

It was a happy thought that led the Society of the Graduates of the School of Political Science in Paris to arrange for a series of conferences on the present budgetary outlook in the most important countries of Europe. These conferences have been published under the title: *La Politique budgétaire en Europe; Les Tendances actuelles: Allemagne, France, Grande-Bretagne, Empire Ottoman, Russie* (Paris, Félix Alcan, 1910; 316 pp.). Among those who took part in the conferences and whose reports are included in this volume are Messrs. Émile Loubet, D. A. Hussien Hilmi, André Lebon and Georges Blondel. The volume will be instructive to the student of public finance, not only because of the wealth of statistical material which it contains, but also because of the authoritative description of present-day tendencies in each country. A general comparison of the five countries is made by Professor Raphaël-Georges Lévy.

Under the editorial management of Professor Frank Moore Colby, *The International Year Book* has become a standard work of reference. *The New International Year Book* (New York, Dodd, Mead and Company, 1910; 792 pp.) has several new features. The book, as the title page announces, is "a compendium of the world's progress for the year 1909."

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